

**TO THE HONORABLE MEMBERS OF THE  
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,  
ORGANIZATION OF AMERICAN STATES**

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**PETITION ALLEGING VIOLATIONS OF THE HUMAN RIGHTS OF VARIOUS  
RESIDENTS OF VIEQUES, PUERTO RICO BY THE UNITED STATES OF AMERICA**

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Submitted by the undersigned appearing as counsel for Petitioners under the provisions of Article 23 of the Commission's Rules of Procedure:

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## I. INTRODUCTION

For sixty years, the United States Navy occupied most of the small island of Vieques, Puerto Rico, using the island as a practice ground for military warfare. The Navy routinely bombed the island—including dropping 500-pound bombs from aircraft—and used known deadly chemicals and toxins such as napalm, Agent Orange, depleted uranium (DU), white phosphorous, arsenic, lead, mercury, cadmium, copper, magnesium, lithium, cobalt, nickel, perchlorate, TNT, PCBs, solvents, pesticides, high explosives and minute particles of “chaff.”<sup>1</sup> Simulated live warfare was conducted several miles from where thousands of civilians live. The environmental impact left by the Navy includes high concentrations on land and sea of lead, mercury, cadmium, uranium, cobalt, manganese, aluminum and “toxic cancer causing substances [that are being leaked] into the ocean endangering sea life.”<sup>2</sup>

When the Navy was not using the land for its own experimentation, it leased the base to other countries, including NATO affiliates, to use for similar military practices.<sup>3</sup> For decades,

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<sup>1</sup> Sanchez Compl. ¶¶ 4, 7158 - 7164.

<sup>2</sup> *ATSDR: Problems In The Past, Potential For The Future?*, Hearing Before The Subcommittee On Investigations And Oversight, 111<sup>th</sup> Cong. 38 – 40, 322 (March 12, 2009), available at <http://www.gpo.gov/fdsys/pkg/CHRG-111hhrg47718/html/CHRG-111hhrg47718.htm> (Comment by Rep. Steve Grayson) (“There are dangerous levels of heavy metals and toxins that have shown up in the crabs, in the fish, in the goats, in the wild horses that roam the island and the vegetation and in the people who live there.”)

<sup>3</sup> *Comité Pro Rescate y Desarrollo de Vieques v. United States of America*, Petition for Precautionary Measures, Inter-American Commission on Human Rights, filed July 31, 1999 (“An advertisement published on the Navy's Web page indicted that this Range was available to other military forces, and contemplated the use of this training area for real-life practice with ‘non-conventional weapons.’”); KATHERINE T. MCCAFFREY, *MILITARY POWER AND POPULAR PROTEST: THE U.S. NAVY IN VIEQUES, PUERTO RICO*, 3 (Rutgers University Press, 1996). At one point the Navy advertised on their website that other countries could rent space to test “new, emerging, innovative” warfare techniques. The Navy previously rented space out of their Vieques facility to NATO and US allies in the Caribbean and South America. See also MARIO MURILLO, *ISLANDS OF RESISTANCE: PUERTO RICO, VIEQUES AND U.S. POLICY* 55 (Seven Stories Press, 2001).

Viequenses have been exposed to lethal contaminants exuded from munitions that have contaminated their bodies, their land and the neighboring sea, and continue to live with the long-lasting effects to their health and environment. As a result of these harmful practices, generations of Viequenses suffer from with inflated rates of cancer, hypertension, asthma, birth defects, higher infant mortality rates and low birth weights, respiratory illnesses, kidney failure and skin rashes. For seventy years now, the Navy has refused to formally acknowledge any wrongdoing or liability on their part or admit a connection between 60 years of bombing and biochemical warfare practices and the resulting health consequences suffered by thousands of Viequenses. Instead, the federal government has blamed these illnesses on Viequenses' choice of diet, grooming and hygiene habits.<sup>4</sup> It remains unknown exactly what munitions and chemicals were used and with what frequency, or what practices other countries engaged in as lessees on the base.

While the Navy officially closed the base for military practices in 2003 to begin the official process of environmental cleanup, the past ten years have shown a tremendous reluctance by the U.S. government to fund a full, adequate and appropriate decontamination effort that would restore the land to the pristine state that predated its military activities and address the continued harm to the health of Viequenses. In addition, despite the fact that the overwhelming majority of Viequense families and lives have been affected by cancer, hypertension, respiratory

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<sup>4</sup> Agency for Toxic Substance and Disease Registry (“ATSDR”), U.S. Department of Health and Human Services, *An Evaluation Of Environmental, Biological, and Health Data from the Island of Vieques* (“ATSDR 2013 Report”) xii - xiv Puerto Rico, March 19, 2013, available at [http://www.atsdr.cdc.gov/hac/pha/vieques/Vieques\\_Summary\\_Final\\_Report\\_English\\_2013.pdf](http://www.atsdr.cdc.gov/hac/pha/vieques/Vieques_Summary_Final_Report_English_2013.pdf).

illnesses and other terminal conditions as a result of the close contamination by the deadly toxins used by the Navy, the Navy has continued to refuse to admit a connection between its practices and emission of contaminants into the land, air and water on and surrounding Vieques and the devastating health consequences affecting generations of Viequenses, including Petitioners. As a result, comprehensive scientific research has been stifled without access to all the information about the toxins that were released and continue to be released due to the Navy's practices of detonating unexploded ordnances and initiating open-air fires as a low-budget alternative to safe and effective decontamination efforts.

Because of the clear violations of the United States' obligations under the American Declaration of the Rights and Duties of Man, Petitioners respectfully request that the Inter-American Commission on Human Rights ("IACHR" or "Commission") admit the etition with all due promptness and speed.

## **II. PETITIONERS**

This petition (the "petition") is filed against the Organization of American States ("OAS") Member State the United States of America on behalf of Zaida Torres, Wanda Bermúdez, Ivis Cintrón Díaz, Ida Vodofsky Colon, Norma Torres Sanes, Cacimar Zenón, Asunción Rivera, Ismael Guadalupe, Ilsa Ortiz Ortiz, Nilo Adams Colón, residents of Vieques, (collectively "Petitioners").

1. Zaida Torres was born on June 20, 1954. Her husband worked as a plumber on the Naval base for 27 years and developed high blood pressure and a prostate cyst. Her daughter, Liza Torres, was diagnosed with acute lymphocytic leukemia (type of cancer) at the age of 15. After being hospitalized and treated with radiation and then

- chemotherapy every three weeks for two years, she died from cancer at the age of 17 years. In approximately 2005, Zaida's uncle died of pancreatic cancer, her aunt of breast cancer and her aunt's son of cerebral cancer.
2. Wanda Bermúdez was born on August 13, 1962, and is fourth generation Viequense. From approximately age 15, she began having pain in her right ear with occasional nasal bleeding. She was diagnosed at age 23 with nasopharyngeal cancer with masses in her nasal passage and throat. She continues to suffer from respiratory illnesses that require periodic hospitalization. Her cousin who grew up next to her was diagnosed with a rare form of cancer of the nervous system and subsequently died three years later.
  3. Ivis Cintrón Díaz was born on November 27, 1964. She has three daughters, two of whom suffered from chronic asthma since they were newborns. They continue to be asthmatic. Her youngest daughter, age 27, is legally blind in her left eye as a result of a rare ophthalmological disease. Ivis has recently been diagnosed with an abnormal pap smear that has been determined to be pre-cancerous.
  4. Ida Vodofsky Colón was born on June 11, 1962. She was raised in Vieques and still has memories of having her house shake from the impact of nearby bombing. She was diagnosed with cancer at 25 years old when she was eight months pregnant with her fourth child. In 2005, she was diagnosed with heavy chemicals in her lungs.
  5. Norma Torres Sanes was born on March 1, 1947. Her family's land was expropriated by the Navy and they were forced to move to Luquillo, Puerto Rico on the mainland

- island. In 2003 she was diagnosed with breast cancer and underwent chemotherapy and radiation.
6. Cacimar Zenón was born on September 1, 1979. He is a scuba-diver and fisherman, as was his father. He has seen the reduction in sea life in the surrounding waters of Vieques which he attributes to the military's practices. His father, other fishermen and he have had their livelihoods affected by the Navy's practices which have often included closing off safer and closer water zones where fishermen routinely fish in order to carry out military practices, or more recently to clean up environmental damage as a result of such practices.
  7. Asunción Rivera was born on August 11, 1955. She was born and raised in Vieques and was diagnosed with breast cancer in 2005. Her father suffered and died from lung cancer and her sister was diagnosed with gastrointestinal cancer and also subsequently died. Her daughter, age 33, was diagnosed with colon cancer in 2012.
  8. Ismael Guadalupe was born on July 23, 1944. He was born and raised in Vieques and has participated actively in civil disobedience and protest activities against the Navy's presence for forty years. In 2000, he was diagnosed with kidney failure and in 2005, approximately, was found to have high concentrations of mercury in his system. He also suffers from hypertension and diabetes.
  9. Ilsa Ortiz Ortiz was born on June 8, 1958. She was born and raised in Vieques. Ilsa has two children who are now adults, both of whom continue to suffer from chronic asthma that has plagued them since they were newborns, as well as from skin conditions including frequent rashes.

10. Nilo Adams Colón was born on November 13, 1947. He was born and raised in Vieques. In 2010, he was diagnosed with abdominal lymphoma cancer. He received chemotherapy and radiation after largely covering his own health expenses and continues to take daily medication. He will need to be treated for a total of 5 years. He also suffers from diabetes.

### **III. CONTEXTUAL CONSIDERATIONS**

Vieques is an island municipality of the Estado Libre Asociado de Puerto Rico (Commonwealth of Puerto Rico), which has been placed in danger by the United States Navy's use of the municipality as a military training ground.

Petitioners alleges that the storage, disposal and firing of live and inert weapons of multiple classes, including napalm, bullets reinforced with depleted uranium, and the consistent and repetitive launching of bombs from jets travelling at high altitudes and speeds has placed them in imminent peril of death and/or serious bodily injury, and exposed them to long-term risks and harms to their health, including, but not limited to, various forms of cancer and respiratory disease, as well as long-term ecological and environmental hazards and permanent or semi-permanent damage to the land.

Because of Puerto Rico's territorial condition, the will of the people of Puerto Rico and the residents of Vieques is, and has historically been, entirely subordinated to that of the United States, including its military policy. Puerto Rico's political status exacerbates the burden imposed by intersection of multiple oppressions of race, ethnicity, culture, class and gender. Accordingly, Viequenses are deprived of political capital to leverage in opposing both the

selection of their island as a military training site and to access remediation for the damage to their environment, their health and their livelihoods.

As non-white, low income, Spanish-speaking inhabitants of a United States colony, the residents of Vieques are subjected to multiple modes of subordination. Intersectionality analysis highlights the increased vulnerability of groups who occupy more than one marginalized category. As applied to a specific human rights issue, the environmental justice movement has amply demonstrated that low income and minority communities bear a disproportionate share of adverse environmental burdens, inflaming structural inequality on local, national and international levels.

The vast majority of Viequenses are at the bottom rung of the socio-economic ladder, a group widely understood to be more vulnerable to discrimination and human rights abuses. Linguistic, racial and cultural differences have allowed those in power to view Viequenses as “other,” rendering it easier for the United States government and its constituents to dismiss the rights to which they are entitled and the harms they suffer.

Gender adds an additional layer of vulnerability to the intersectional framework. The United States bombing campaign has had a disproportionate impact on women, who suffer health harms that are particularly damaging to female reproductive health, and in a gendered society,

tend to bear the burden to provide care for infirmed family members. Moreover, women have been brutalized by sexual assaults perpetrated by United States military forces.<sup>5</sup>

The protracted and destructive military training campaign in Vieques, its ensuing harm, and the unwillingness of the United States government to provide full and fair remediation and reparations is partly attributable to the intersection of multiple axes of marginalization.<sup>6</sup>

#### IV. FACTS

##### **A. THE NAVY EXPROPRIATED 75% OF VIEQUES, WHERE IT CONDUCTED MILITARY EXERCISES INCLUDING SIMULATED WARFARE, BIOCHEMICAL TESTING AND BOMBING FOR 60 YEARS, IMPERILING A CIVILIAN COMMUNITY THAT WAS NEVER WARNED OF THE HAZARDS OF SUCH PRACTICES.**

Vieques is an island municipality of Puerto Rico, a colonial territory of the United States since 1898. It subsisted primarily of agriculture until the Navy's occupation. The island is approximately 4.5 miles wide by 20 miles long, for a total area of 51 square miles.<sup>7</sup>

The federal government was by far Vieques' largest landowner. According to the 2007-2011 Puerto Rico Community Survey, 46.3% of the residents live in poverty.<sup>8</sup> Extremely

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<sup>5</sup> During the first few decades of the Navy's tenure on the island, many Viequense women lived with the actual harm or threat of harm of physical and sexual assault by Navy officers who would be released from the base into the town or other parts of the island. Women can still recall their mothers or grandmothers standing guard by doors with a machete to ward off Navy officers who would randomly come looking for women and would bang or knock down doors looking for "señoritas." Young women could be chased off the roads into sugarcane fields by Navy convoys or trucks, or would have their families lock them in their homes at dusk to avoid Navy officers. As a result, throughout the Navy's occupation and presence in Vieques, residents or their families have often feared for their safety due to the physical and sexual harassment and assault by Navy officers.

<sup>6</sup> See generally Ronald O'Rourke, Congressional Research Service Report for Congress, *Vieques, Puerto Rico Naval Training Range: Background and Issues for Congress* ("Naval Training Range Report"), RS20458, at 2 (Jan. 10, 2003), available at [http://digital.library.unt.edu/ark:/67531/metaocrs4300/m1/1/high\\_res\\_d/RS20458\\_2003Jan10.pdf](http://digital.library.unt.edu/ark:/67531/metaocrs4300/m1/1/high_res_d/RS20458_2003Jan10.pdf).

<sup>7</sup> ATSDR 2013 Report at 3.

circumscribed access to the sea and land of Vieques is cited as a reason for high levels of poverty and unemployment, since Viequenses have never received the bulk of their expropriated lands back to develop them as they see fit.

In 1941, the Navy set up military operations in the municipal islands of Culebra and Vieques, Puerto Rico as part of the Atlantic Fleet Weapons Training Facility (“AFWTF”), with headquarters in Ceiba, Puerto Rico. In 1942-1943 and 1947, the Navy expropriated of 75% of the land on Vieques for the use of military practices, totaling approximately 23,000 acres. The expropriation of 75% of the island involved the forced evacuation and displacement of hundreds of Viequenses families who were forced to relocate to the middle of the island and leave the land they either owned or worked on. Families were often only given a 24-hour warning that they must evacuate their homes. Those that were compensated for their forced evacuation only received between \$30 - \$50 U.S. dollars for the entire family.<sup>9</sup>

In 1975, shortly after the Navy was forced to close its military base and end practices in the neighboring Puerto Rican municipal island of Culebra,<sup>10</sup> the Navy transferred such activities

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<sup>8</sup> U.S. CENSUS BUREAU; AMERICAN COMMUNITY SURVEY, 2007-2011 AMERICAN COMMUNITY SURVEY 5-YEAR ESTIMATES, available at <http://factfinder2.census.gov> (last accessed on September 15, 2013). The 1990 U.S. Census Bureau statistics showed that 73% of the residents lived in poverty.

<sup>9</sup> Residents assert that abuse by the Navy started with their initial presence on the island by taking land and destroying property without the proper resettlement of residents into other facilities or adequate compensation for taking their land. Most Viequenses who were displaced from their homes argue that they never received compensation for their land, homes or property that the Navy expropriated. In addition, they claim that the Navy gave them only a few days (or in some cases a matter of hours) to vacate their premises before bulldozers and tractors would come to tear them down. See LISA MULLENNEAUX, ¡NI UNA BOMBA MÁS!: VIEQUES VS. THE U.S. NAVY 23 (The Pennington Press, 2000).

<sup>10</sup> Exec. Order No. 11,886, 40 FR 49071 (October 17, 1975).

to Vieques, establishing a live firing range on the eastern end of the island and a munitions storage facility on the western end of the island.

The western 8,000 acres comprised the Naval Ammunition Facility, and was used primarily to store munitions. Residents of the economically depressed island were often hired to unload ships laden with weapons of all sorts, which were stored in bunkers located throughout this area. The weapons were sometimes transported by truck across the civilian sector to the Navy's training area, comprising most of the eastern third of the island.<sup>11</sup>

The 15,000 acres on the eastern coast were part of the AFWTF.<sup>12</sup> The “Inner Range” of AFWTF was comprised of 10,800 acres, “including air and water. It was used for amphibian landings, light artillery practice, aerial and sea bombings with both live and inert munitions, and an area for combat training in minefields.”<sup>13</sup> Training here was conducted with live weapons. Targets in the “Inner Range” were regularly subjected to bombing and strafing. Bombing practice was carried out almost half of all the days of the year between the hours of 7:00 a.m. and 10:00 p.m..<sup>14</sup> The Eastern Maneuver Area consisted of the eastern end of the island where the Navy conducted its live-fire exercises.<sup>15</sup>

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<sup>11</sup> See *Comité Pro Rescate y Desarrollo de Vieques v. United States of America*, Petition for Precautionary Measures, Inter-American Commission on Human Rights, filed July 31, 1999; *Romero Barcelo v. Brown*, 643 F.2d 835, 838 (1st Cir. 1981).

<sup>12</sup> Environmental Protection Agency, *Fact Sheet on Atlantic Fleet Weapons Training Area - Vieques, Puerto Rico*, EPA ID# PRN000204694, available at <http://www.epa.gov/region02/superfund/npl/0204694c.pdf>.

<sup>13</sup> *Id.*, *Comité Pro Rescate y Desarrollo de Vieques*, Petition for Precautionary Measures; Nicole Trull, *Atlantic Fleet Weapons Training Facility Celebrates 40th Birthday*, Story Number: NNS030828-19 (Aug. 28, 2003), [http://www.navy.mil/submit/display.asp?story\\_id=9250](http://www.navy.mil/submit/display.asp?story_id=9250).

<sup>14</sup> Petitioners claim that practices could be carried out daily or weekly as long as the Navy was present on the island, and that their activities were carried out at all hours of the day and night.

<sup>15</sup> *Comité Pro Rescate y Desarrollo de Vieques*, Petition for Precautionary Measures.

For decades, the Navy fired “ships and aircraft . . . and dropped live bullets, artillery rounds, rockets, missiles, and bombs into the [live impact area].”<sup>16</sup> Nearly five million pounds of ordnance was dropped in Vieques annually during the duration military training activity. The Navy had permission to bomb 180 days a year<sup>17</sup> and has admitted to exploding up to 20 bombs and shells a minute at times.<sup>18</sup> In or near 1978, “approximately 36.8 tons of NGFS explosives and 532.8 tons of ATG explosives were expended. Naval Operations predicted that by 1985 the annual expenditure of explosives would be about 54 tons of NGFS and 736 tons of ATG.”<sup>19</sup> In 1998 alone, the Navy dropped over 23,000 bombs in Vieques.<sup>20</sup> On February 19, 1999, two Marine Corps jets fired 263 rounds, each containing 148 grams of uranium, in the live impact area range, of which only 57 rounds were recovered the following month, leaving the remaining 206 unaccounted for to this day. More than 300,000 munitions were fired during military operations,<sup>21</sup> but over 700,000 items of both live and inert munitions total were expended in the live impact area in total from 1974 – 1998.<sup>22</sup> The Navy ultimately tested over 300 million pounds of explosives weaponry on the island.

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<sup>16</sup> ATSDR 2013 Report, at x.

<sup>17</sup> LISA MULLENNEAUX, ¡NI UNA BOMBA MÁS!: VIEQUES VS. THE U.S. NAVY, p. 8, 25, 117 (The Pennington Press, 2000); ATSDR 2013 Report, at 3; Naval Training Range Report, at 2.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> Sanchez Compl., ¶ 7151.

<sup>20</sup> Sanchez Compl., ¶ 2.

<sup>21</sup> Naval Facilities Engineering Command Atlantic, Vieques Island, Puerto Rico Environmental Restoration Program, <http://public.lantops-ir.org/sites/public/vieques/default.aspx>.

<sup>22</sup> Naval Facilities Engineering Command, *Final Preliminary Range Assessment Report, Vieques Naval Training Range*, No. 02242, TPA/030900035, P/ENVIRONMENTAL/175685, at 2-15, available at [https://niris.navfac.navy.mil/Document\\_Management%2FATLANTIC%2FVIEQUES\\_EAST%2F/N69321\\_002252.pdf](https://niris.navfac.navy.mil/Document_Management%2FATLANTIC%2FVIEQUES_EAST%2F/N69321_002252.pdf).

In numerous documented instances, the Navy repeatedly missed its target while bombing, dropping bombs in nearby land and sea, in close proximity to island civilians. Unexploded ordnance and bombs likely still lie in the land and surrounding waters. For example, in 1999 an aircraft erroneously missed its target and dropped a 500-lb bomb near the post of David Sanes Rodríguez, a civilian employee of the Navy who worked as a security guard at the AFWTF, killing him.

In response to the killing of Sanes, on May 11, 1999, by means of Executive Order 1999-21, the Governor of Puerto Rico appointed a Special Commission on Vieques to Study the Existing Situation on the Island Municipality with Regard to the Activities of the United States Navy (hereinafter “Special Commission”), chaired by the Hon. Norma Burgos, Secretary of State, with the participation of leading figures and elected officials from the three major political parties, the Mayors of Vieques and San Juan, the Archbishop of San Juan, and a representative of the Fisherman's Association of the South of Vieques.<sup>23</sup> On June 21, 1999, the Navy resumed maneuvers in the high seas off the coast of Vieques. On June 25, 1999, the Special Commission issued its “Special Commission Report.” This report was immediately adopted as the official policy of Puerto Rico.

On July 15, 1999, Secretary of the Navy Richard Danzig made public the results of a Navy study for the Special Panel. In the study, the Navy maintained that “realistic live ordnance

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<sup>23</sup> Exec. Order No. 1999-21, May 11, 1999, available at [http://app.estado.gobierno.pr/Ordenes\\_Ejecutivas/1999/OE-1999-21.pdf](http://app.estado.gobierno.pr/Ordenes_Ejecutivas/1999/OE-1999-21.pdf); enacted S.B. 2021, Act No. 34, 13<sup>th</sup> Legislature (Puerto Rico), available at <http://www.oslpr.org/download/en/2000/0034.pdf>.

weapons training” at Vieques is essential to the success of its missions.<sup>24</sup> The Navy’s study concluded that there “has not been a single incident of live fire at the Vieques range harming the civilian population outside of the range area,” yet neglected to recognize the killing of David Sanes Rodríguez or the likelihood that stray torpedos, unexploded mines and mortars and other lethal weapons, such as uncollected bullets reinforced with depleted uranium, could take the lives of civilians.<sup>25</sup>

In 2000, the Navy was granted approval to continue bombing in Vieques<sup>26</sup> with an understanding that all activities would cease as of May 1, 2003.<sup>27</sup> Between 2000 until 2003, the Navy used “inert” or practice munitions, which also contained an array of toxic metals in their propellants, bodies, and smoke producing substances. The Navy has always maintained that the use of Vieques was critical to its military operations, though Navy personnel have often held Viequenses in low regard.<sup>28</sup>

The Government Accountability Office released a report in 2004 stating that the Department of Defense may have exposed civilians and military personnel to biochemical agents for Shipboard Hazard & Defense (“SHAD”), which was part of Project 112, including trioctyl

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<sup>24</sup> Press Briefing, Secretary of the Navy, *The National Security Need for Vieques*, July 15, 1999, available at <http://www.navy.mil/navydata/people/secnav/danzig/speeches/vieques.pdf>.

<sup>25</sup> *Id.*

<sup>26</sup> 114 STAT. 1654, § 1504(c), P.L. 106-398. The appropriations bill included \$40 million for economic assistance on the island. § 1501.

<sup>27</sup> § 1505(b).

<sup>28</sup> When providing an interview and tour of the Vieques base, the Navy’s former public relations officer, Chief Anne Bradford, told a journalist “[Viequenses] are not used to doing things on a big scale...they don’t understand what the Navy is about. It’s like a third world country. They can’t understand – it’s like expounding on Newton’s theory to an eighteen-month-old baby.” MCCAFFREY, *supra* note 3, at 114.

phosphate, an agent known to cause cancer in animals.<sup>29</sup> Significant evidence exists linking the Navy's activities to long-term damage to the health of residents and possibly to the island's environment, yet the Navy continues to refuse to admit liability or to fully disclose its activities. Despite the Navy's intentional withholding of information regarding its activities, including the use of depleted uranium, the Navy argued that 7,125 Viequeses who served as plaintiffs in a federal lawsuit "failed to show any causal relationship between the act of firing depleted uranium shells and Plaintiffs' [harm]."<sup>30</sup> Placing the burden of proof upon residents to whom the Navy has refused to disclose the information needed to adequately prove such a causal relationship highlights the challenges residents face in seeking full and fair reparations for the harms they have suffered.

**B. AS A RESULT OF THE NAVY'S TOXIC MILITARY PRACTICES, RESIDENTS OF VIEQUES HAVE SUFFERED, AND CONTINUE TO SUFFER, SERIOUS AND CHRONIC ILLNESSES WITHOUT ACCESS TO ADEQUATE HEALTH SERVICES.**

After the expropriation of land in 1941, the civilian population of Vieques was relocated to the middle of the island between the two naval sites. The island's weather patterns exposed relocated civilians to airborne contaminants and carcinogens emanating from the military's use

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<sup>29</sup> GOVERNMENT ACCOUNTABILITY OFFICE, REPORT TO THE SENATE AND HOUSE COMMITTEES ON ARMED SERVICES, CHEMICAL AND BIOLOGICAL DEFENSE, DOD NEEDS TO CONTINUE TO COLLECT AND PROVIDE INFORMATION ON TESTS AND POTENTIALLY EXPOSED PERSONNEL 9 (May 2004) ("In the 1962-74 time period, the Department of Defense (DOD) conducted a classified chemical and biological warfare test program—Project 112—that might have exposed service members and civilian personnel to chemical or biological agents.") See also Tim Padgett, *Toxic Chemicals at Vieques: Is U.S. Accountable?*, Time Magazine, (Sept. 16, 2009), available at <http://content.time.com/time/nation/article/0,8599,1924101,00.html#ixzz2dNBjJeI>.

<sup>30</sup> *Sanchez v. United States*, 707 F. Supp. 2d 216, 224 (D.P.R. 2010).

of weaponry, since the prevailing trade winds on Vieques blow from east to west around 80% of the time, with strong sea breezes that also tend to blow towards the civilian populations.<sup>31</sup>

The cancer rate in Vieques is almost 30% higher than the mainland of Puerto Rico. A study published by the Puerto Rico Health Department in 2000 analyzing the incidence of cancer from 1960 – 1994 found that 609 cases were diagnosed during that period, with breast and uterine cancer being the most frequent among women (20.9% and 20.5% respectively) and prostate cancer being most frequent among men (22.6%). Beginning in the late 1970s and 1980, the cancer rate in Vieques became 27% higher than the rest of Puerto Rico.<sup>32</sup> From 1985 -1989, the risk of developing cancer for children up to nine years old was double the risk for children of the same age in the rest of Puerto Rico, while children from 10 to 19 years old had 3.5 times the risk of developing cancer.<sup>33</sup> Between 1995 – 1998, Vieques had a 34% higher rate of cancer than mainland Puerto Rico.<sup>34</sup> The Navy cannot dismiss the stark difference in cancer rates between the mainland and Vieques as purely coincidental.

Viequenses also suffer from other health conditions, mostly long-term or serious, at an elevated rate compared with the rest of mainland Puerto Rico as a result of the Navy's practices.

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<sup>31</sup> Sanchez Compl., ¶ 7148.

<sup>32</sup> Nayda R. Figueroa, MD, MPH, et al., *Incidencia y Mortalidad de Cáncer en Vieques 1990 – 2004*, at 13, 15 (Nov. 25, 2009).

<sup>33</sup> Déborah Santana, Cruz Maria Nazario and John Lindsay-Poland, *Vieques, Puerto Rico In Focus Environmental and Health Impacts of Navy Training A Crisis and its Causes*, Second National People of Color Environmental Leadership Summit, at 5 (Oct. 23, 2002).

<sup>34</sup> Dr. Carmen Ortiz Roque, Jose Ortiz Roque, Ph.D., and Dr. Dulce Albandoz Ortiz, *Exposición a contaminantes y enfermedad en Vieques: Un trabajo en progreso* 8 (“Exposicion”) (Sept. 14, 2000).

- Viequenses suffer from a 381% higher hypertension rate than the rest of Puerto Rico and it is among the leading causes of death.<sup>35</sup> From 1995 – 1998, 21% more Viequenses died from heart-related disease than the rest of Puerto Rico.<sup>36</sup>
- Respiratory illnesses, including asthma, have become highly prevalent in Vieques, especially among children. From 1995 – 1998, 33% more Viequenses died of respiratory and lung-related illnesses than the rest of Puerto Rico.<sup>37</sup>
- Viequenses suffer from a 41% higher diabetes rate than the rest of the island, and from 1995 – 1998 approximately 15% more Viequenses died as a result of diabetes than the rest of Puerto Rico.<sup>38</sup>
- From 1975 – 1995, Vieques experienced a 55% higher infant mortality rate than the rest of Puerto Rico. Infant mortality rate is a well-used indicator of the general health of a population.<sup>39</sup>
- From 1995 – 1999, general mortality rates were 34% higher on Vieques than the rest of Puerto Rico, including Fajardo, which is where the majority of Viequenses access health services.<sup>40</sup>

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<sup>35</sup> Figueroa, et al., at 15.

<sup>36</sup> *Exposición*, at 8.

<sup>37</sup> *Id.* at 8.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 6 - 7.

<sup>40</sup> *Id.* at 7.

- Residents of Vieques have a 95% higher cirrhosis rate than the rest of Puerto Rico, and during the late 1990's, 253% more Viequenses died from liver-related failure than mainland Puerto Rico.<sup>41</sup>

Numerous contaminants and heavy metals have also been detected in hair samples obtained from thousands of residents on Vieques, including:

- Toxic levels of mercury
- Toxic levels of lead contamination
- Arsenic contamination
- Cadmium contamination
- Aluminum contamination
- Antimony contamination.<sup>42</sup>

As demonstrated by the study, Viequenses are exposed to high or toxic levels of heavy metals that can produce serious conditions and illnesses. Over 45% of all Viequenses have toxic levels of mercury,<sup>43</sup> and women of reproductive age have been exposed to mercury at levels that are unsafe to them and developing fetuses.<sup>44</sup> In addition, 13% of residents tested positive for

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<sup>41</sup> *Exposición, supra* note 29, at 8.

<sup>42</sup> Sanchez Compl., ¶ 7163.

<sup>43</sup> *Exposición*, at 6.

<sup>44</sup> Dr. Carmen Ortiz Roque and Yadiris Lopez-Rivera, *Mercury contamination in reproductive age women in a Caribbean island: Vieques* (“Mercury contamination”), J. EPIDEMIOL COMMUNITY HEALTH 2004; 58:756–757 (“Mercury is among the 102 violations to effluent water quality parameters committed by the US Navy in the coast of Vieques. No other source of mercury contamination has been identified in that island.”); An earlier 2001 study by the College of Physicians of Surgeons of Puerto Rico showed that 33% of Viequenses have unsafe levels of mercury in their bodies, and 56 % have unsafe levels of aluminum. Studies also show toxic levels of arsenic, cadmium and lead. Sanchez Compl. ¶ 3.

toxic levels of lead, while 4% showed cadmium contamination.<sup>45</sup> Additional scientific studies have found the following non-native contaminants in high concentrations in the residents of Vieques: “cobalt, copper, nickel, vanadium, palladium, iron, magnesium, manganese, silicon, cerium, dysprosium, lanthanum, neodymium, praseodymium, silver, ytterbium, and tellurium.”<sup>46</sup>

Vibroacoustic condition may be triggered by exposure to loud noises.<sup>47</sup> Damage from exposure to such noises can be structural and physical, and “[i]n August 2001, Vieques residents reported negative effects from explosions, ranging from cracked roofs and walls to severe emotional disturbance among school children.”<sup>48</sup> Petitioners each claim that they were subjected to traumatic explosions and noises throughout their childhood and into adulthood.

Despite the high incidence of illness on Vieques, the island currently has no adequate health services, including general and specialized physicians, equipment, laboratories and diagnostic and treatment facilities on Vieques to adequately diagnose and treat various serious conditions, including cancer. The overwhelming majority of Viequenses must travel to mainland

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<sup>45</sup> *Exposicion*, at 3.

<sup>46</sup> Sanchez Compl., ¶ 7164.

<sup>47</sup> On April 18, 2001 Governor Sila Calderon introduced the Noise Prohibition Act of 2001, which was passed five days later on April 23, 2001, by the Puerto Rican Legislature, as a way of limiting the Navy’s exercises because of the excessive noise damage it caused. The next day on April 24, 2001, Puerto Rico filed a federal lawsuit to halt the Navy’s exercise, arguing that the Navy’s training activities would threaten public health and violate both the new noise restriction law and the 1972 federal Noise Control Act. The Court rejected the request for a temporary restraining order to halt the exercises, although it did criticize the Navy’s actions. The Navy has historically denied the accuracy of these reports or has sought to minimize these complaints as compromising military tactics and training. See *Impact of Range Encroachment Issues, Including Endangered Species and Critical Habitats; Sustainment of the Maritime Environment; Airspace Management; Urban Sprawl; Air Pollution; Unexploded Ordinance; and Noise, Hearing Before the S. Subcommittee on Readiness and Management Support*, 107<sup>th</sup> Cong. 737 (2001) (statement of Vice Admiral James F. Amerault, Usn, Deputy Chief of Naval Operations, Fleet Readiness and Logistics).

<sup>48</sup> *Exposicion*, at 3.

Puerto Rico whenever they need medical attention, whether it consists of generalized care, follow-up care or treatment for their health conditions.<sup>49</sup>

**C. AS A RESULT OF THE NAVY’S TOXIC MILITARY PRACTICES, THE LAND, AIR AND SURROUNDING SEA HAS BECOME POLLUTED WITH TOXIC RESIDUE AND SUBSTANCES THAT CONTAMINATE MARINE LIFE AS WELL AS THE CIVILIAN POPULATION ON VIEQUES.**

The Navy’s warfare program and practices on the island have caused short-term and long-term damage to the environment on Vieques. Several studies have shown “dangerous levels of heavy metals and toxic explosives related chemicals in soil, water, air, animal and human samples.”<sup>50</sup> The Navy estimates that up to 9,000 acres may be contaminated by “munitions and explosives of concern.”<sup>51</sup>

The utilization of Vieques as a weapons and chemical warfare testing ground for nearly 60 years, as well as subsequent open air detonation and open burning of munitions and land, has created vast volumes of hazardous and toxic waste, including contaminated soil, air and water and unexploded ammunition.<sup>52</sup> Around 1978, a “Water Quality Survey conducted by the Navy detected high levels of zinc and lead in the surface water in eastern Vieques. That same study also showed the presence of RDX—a toxic component of military explosives—in several

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<sup>49</sup> Figueroa, et al., at 58 (noting the lack of early detection for specific types of cancer that could be diagnosed and treated early on, and a lack of access to health services and treatment for those forms that are much harder to detect (treat?) once they have in fact been diagnosed.)

<sup>50</sup> Sanchez Compl., ¶ 6.

<sup>51</sup> Naval Facilities Engineering Command Atlantic, Vieques Island, Puerto Rico Environmental Restoration Program, <http://public.lantops-ir.org/sites/public/vieques/default.aspx>.

<sup>52</sup> Sanchez Compl., ¶ 8.

drinking water supply sources on civilian land.”<sup>53</sup> In another report, “[b]etween 1985 to 1999, the Navy reported to the Environmental Protection Agency (EPA) its measurements of discharges of heavy metals and other materials into the waters of eastern Vieques where the impact area is located. The measurements show that discharges of lead, barium, cadmium, arsenic, boron, cyanide, hexavalent chromium, and 13 other substances repeated violated the Clean Water Act and Puerto Rico Water Quality Standards.”<sup>54</sup>

As a result of the Navy’s activities on Vieques, numerous heavy metals have been discovered in toxic concentrations in vegetation in the civilian zone, sea grasses and in sediments from Gato and Anones lagoons within the military perimeter on Vieques, including lead, cadmium, manganese, copper, cobalt, and nickel.<sup>55</sup> High concentrations of cadmium, lead, mercury, selenium, arsenic, and zinc have also been found in crabs and fish, which threaten the health of residents for whom local seafood forms the main part of the diet.<sup>56</sup>

The fishing industry in Vieques comprises approximately 40% of the local economy. Fishermen have often complained about the great number of unexploded bombs in the coastal waters of Vieques and the destruction caused to coral reefs and other elements of the marine environment harmed by stray bombs from jets and ships. The Navy’s activities interfered with the ability of local fishermen to practice their trade, both because the military practices leaked

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<sup>53</sup> Sanchez Compl., ¶ 7149.

<sup>54</sup> Sanchez Compl., ¶ 7150.

<sup>55</sup> Sanchez Compl., ¶¶ 7158 - 60.

<sup>56</sup> Sanchez Compl., ¶¶ 7161 - 62.

toxins and contaminants into the surrounding waters and because the Navy would routinely block water routes that the fisherman followed daily in order to carry out their warfare practices.

The Navy did not safely store or dispose of its toxic waste, causing permanent damage to Vieques and its surrounding environment as well as causing Petitioners' injuries and long-term harms to their health and the health of residents on the island.<sup>57</sup> Moreover, the Navy has never fully admitted to the types of weapons, chemicals, arms, and munitions used in Vieques throughout its decades of military practices, nor the frequency, duration and location such munitions were used.<sup>58</sup> Without full knowledge of the toxic chemicals and materials used, a full assessment, cleanup, and adequate civilian and governmental oversight are stunted, as well as the ability of civilians to diagnose and treat subsequent illnesses as a result of their exposure to unknown toxins.

#### **D. IMPLEMENTATION AND FLAWS OF THE CLEANUP PROCESS**

The Navy accepted liability for the cleanup of lands on the western end of Vieques that were subsequently transferred to the Department of the Interior in a Memorandum of Agreement dated April 27, 2001, and for lands in eastern Vieques in a Memorandum of Agreement dated

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<sup>57</sup> Sanchez Compl., ¶ 8.

<sup>58</sup> Sec. 334, Ordnance Related Records Review and Reporting Requirement for Vieques and Culebra Islands, Puerto Rico, H.R. 1960, 113<sup>th</sup> Cong. (2013) (introduction of legislation to require that the Navy “identify the type of munitions, the quantity of munitions, and the location where such munitions may have potentially been used or may be remaining on the islands of Vieques and Culebra, Puerto Rico, and in the nearby cays or waters. The historical review shall also determine the type of various military training exercises that occurred on each island and in the nearby cays and waters.”)

April 30, 2003.<sup>59</sup> In 2007, the Department of the Navy, Department of the Interior, Environmental Protection Agency and Commonwealth of Puerto Rico signed a Federal Facilities Agreement to govern the duties and responsibilities of each party to monitor and oversee the cleanup process at the Vieques Superfund site, which is to be primarily administered by the Navy.<sup>60</sup>

Most of the land formerly occupied by the Navy has since been transferred to the Department of the Interior's Fish and Wildlife Service to preserve as a "natural reserve," allowing very limited public access to the vast majority of the land. Cleaning and decontaminating lands for public or human use requires a higher standard than that applicable to land designated for preservation, and thus also has a higher cost for ensuring such lands are safe for human habitation and use.<sup>61</sup>

The Navy has hired a military contractor to carry out the cleanup, who has in turned hired local Viequenses to assist in picking up both exploded and unexploded munitions. Viequenses are paid a high hourly wage and are required to waive all potential claims of liability against the

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<sup>59</sup> David Bearden, Congressional Research Service Report for Congress, *Vieques and Culebra Islands: An Analysis of Cleanup Status and Costs* ("CRS Report"), RL32533, at 7 (July 7, 2005) ("The liability for cleanup when land is transferred from a federal agency to a non-federal entity is specified in Section 120(h) of CERCLA, which applies to the transfer of lands on western Vieques from the Navy to the Municipality of Vieques and the Puerto Rico Conservation Trust."), available at

<sup>60</sup> Federal Facilities Agreement, *In the Matter of U.S. Departments of the Interior and Navy, Island of Vieques, Puerto Rico*, FFA-CERCLA-02-2007-2001 (March 25, 2008).

<sup>61</sup> CRS Report, at 14 ("Consequently, cleanup may be less extensive than if the land were designated for uses that would involve human presence.")

Navy. Residents assist in picking up munitions without knowing whether they are active, despite the Navy's claims that using workers to do such work by hand could be unsafe.<sup>62</sup>

As of 2012, the United States had removed more than 16.9 million pounds of munitions, but the EPA estimates that millions more pounds still remain.<sup>63</sup> The cleanup of the live impact area that held the bombing range is expected to run through at least 2022 for land areas and 2029 for underwater areas.<sup>64</sup> As of 2009, unexploded munitions remained on approximately 8,900 acres on the eastern end of the island that includes the Navy's live impact area.<sup>65</sup>

The Navy has engaged in substandard cleanup practices, such as the open-air detonation of munitions and open burning of vegetation, which the Environmental Protection Agency determined to be hazardous to the environment.<sup>66</sup> Puerto Rican biologist and scientist Arturo Massol of Casa Pueblo de Adjuntas has expressed concern regarding the Navy's clean-up tactic of burning vegetation to facilitate finding ordnances, noting that the Navy has yet to describe or explain what types of vegetation and fauna they seek to burn, and whether such vegetation

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<sup>62</sup> Compare this practice with a previous statement by Navy officials: "Most contested here is a Navy request to the E.P.A. and the Environmental Quality Board in Puerto Rico to allow the controlled burn to clear vegetation and find bombs. The risk of accidental explosions, the Navy says, is too high for workers to do it by hand using chainsaws, machetes and trimmers. 'The issue is safety,' said Mr. Penny of the Navy." Mireya Navarro, *New Battle on Vieques, Over Navy's Cleanup of Munitions*, The New York Times, Aug. 6, 2009, available at <http://www.nytimes.com/2009/08/07/science/earth/07vieques.html>.

<sup>63</sup> Environmental Protection Agency, *Atlantic Fleet Weapons Training Area – Vieques Activities from 2001 to 2013*, Newsletter of May 2013, [http://www.epa.gov/region02/vieques/may2013viequesupdate\\_.pdf](http://www.epa.gov/region02/vieques/may2013viequesupdate_.pdf).

<sup>64</sup> Ben Fox, *Vieques Cleanup: Island at Odds With U.S. Government Declaration that 400-Acre Bomb Site Cleanup Is Complete*, Huffington Post, Oct. 4, 2012, [http://www.huffingtonpost.com/2012/10/05/vieques-cleanup-bomb-site\\_n\\_1942107.html](http://www.huffingtonpost.com/2012/10/05/vieques-cleanup-bomb-site_n_1942107.html); EPA Newsletter.

<sup>65</sup> *New Battle on Vieques*, *supra* note 56.

<sup>66</sup> Sanchez Compl., ¶ 7154 ("In or about January 2000, the EPA noted that OB/OD contaminates the surrounding environment with 13 types of toxic substances including benzene and toluene, which have been identified in the groundwater under civilian sectors of Vieques.")

already contains toxins released by military practices, including heavy metals such as lead, cadmium, and uranium. Massol stated that

[t]he burning of vegetation that grew in a natural way in the old firing range would represent an imminent health risk for the residents of . . . Vieques. In addition, the burning represents the removal of a natural barrier against erosion of contaminated soil to the marine ecosystem. This form of “cleaning” where chemical contaminants . . . are released to the air by burning and exposing other ecosystems and the residents of the island itself is irresponsible, unacceptable and illegal.<sup>67</sup>

The Navy endeavors to fulfill its responsibilities for decontaminating the land in the most economical way, irrespective of whether these techniques are the safest alternative, and the Navy has not prioritized restoring the land to enable future use. For example, the Navy initially proposed closing off part of the former live area range that still contains contaminants and possibly live explosives with a gate in order to keep residents away. In proposing such a solution, the Navy failed to undertake an evaluation of whether such an easily surmountable physical barrier would effectively prevent trespassers and residents from accessing the site and potentially coming into contact with contamination. Simply, a gate would not serve as an adequate barrier to leakage of uncontained contamination into land or ocean waters.<sup>68</sup> Massol has also expressed concern about the Navy’s refusal to contain the contamination from the eastern end of the island and the toxic pollutants from escaping into the island’s waterways, such

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<sup>67</sup> Elba Díaz de Osborne, Pablo Acevedo Acevedo y Arturo Massol Deyá, Universidad de Puerto Rico, *Evaluación de Metales Pesados en Productos Agrícolas de una Finca con Prácticas Orgánicas en el Bo. Luján Sector Destino de Vieques (Puerto Rico)*, Oct. 21, 2008.

<sup>68</sup> After rejection by residents of Vieques and members of the local Restoration Advisory Board, the Navy abandoned such proposal.

as Lago Anones, and ultimately emptying out into the ocean. The consequence is not just continuous contamination of an already overexposed area to highly dangerous contaminants, but the ability of such contaminants to reach civilians via waterways and contaminate the soil and consequently agriculture and food consumed by residents.<sup>69</sup>

While Congress allocates funding annually to the Department of Defense (“DOD”) to be used in remediating environmental and health damage caused by the military’s activities, the DOD has discretion in how it allocates and spends those monies.<sup>70</sup> The Navy has consistently stated that its surface removal process in “cleaning up” Vieques—not in actual decontamination of the island—has thus far cost \$180 million since 2005<sup>71</sup> and may be the most expensive cleanup process in the Navy’s history, with an estimate that the full “cleanup” of Vieques could cost around \$330 million.<sup>72</sup>

However, those decrying the clean-up costs fail to consider the pervasive damage to the island and its inhabitants from the decades of bombing and biochemical warfare. In fact, “the listing of Vieques [as a Superfund site] does not necessitate a certain degree of cleanup . . . [nor does it] guarantee a certain amount of funding to perform the cleanup.” The federal government has determined there is no causal link from the Navy’s activities and the severe health

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<sup>69</sup> Inter-American Commission on Human Rights (“IACHR”), *American Declaration of the Rights and Duties of Man*, May 2, 1948; CRS Report, at 15 (noting that the “EPA or the Puerto Rico Environmental Quality Board could require the Navy to take cleanup actions that would prevent migration of contamination into the ocean, based on the possibility that the concentration of contaminants in fish and shellfish could rise to harmful levels in the future if migration were to occur.”)

<sup>70</sup> CRS Report, at 8.

<sup>71</sup> Environmental Protection Agency, *Atlantic Fleet Weapons Training Area – Vieques Activities from 2001 to 2013*, Newsletter of May 2013, [http://www.epa.gov/region02/vieques/may2013viequesupdate .pdf](http://www.epa.gov/region02/vieques/may2013viequesupdate.pdf).

<sup>72</sup> *Id.*

consequences to Vieques residents. Thus the fact that “the Navy reports that it allocates cleanup funding according to human health risks [and] [t]he allocation of funding for Vieques would depend on the risks identified in site investigations,”<sup>73</sup> inspires little faith that the Navy will engage in a comprehensive decontamination effort that would address the generational harms caused. A Navy spokesperson said that, “[w]hile we are concerned about the health of the people of Vieques, our No. 1 focus here is not health problems, but munitions cleanup, which we’re doing as quickly as we can and in compliance with U.S. environmental regulations.”<sup>74</sup> This is contrary to the EPA’s description of the purpose of the Federal Facilities Agreement, which is to “ensure[] that the Navy thoroughly investigates environmental impacts associated with past and present activities at the site and takes appropriate action to protect public health, welfare, and the environment.”<sup>75</sup>

## V. VIOLATIONS TO THE AMERICAN DECLARATION

The United States Navy has violated the basic human rights of the people of Vieques for close to 60 years, including the ten years subsequent to the cessation of military training activities, and continues to engage in harmful practices to residents’ health and the environment. The Navy has consistently refused to fully admit what chemicals and munitions it used in its practices, which has deprived Viequenses and scientists of the ability to comprehensively

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<sup>73</sup> CRS Report, at 8.

<sup>74</sup> Molly M. Ginty, *Vieques Women Claim Navy's Toxins Destroy Health*, Womens E-News, March 8, 2007, <http://womensenews.org/story/the-world/070308/vieques-women-claim-navys-toxins-destroy-health>.

<sup>75</sup> See introduction <http://www.epa.gov/region02/vieques/ffa/>.

diagnose the health and environmental hazards affecting both people and environment, including the land and neighboring sea.<sup>76</sup>

**A. VIOLATION OF PETITIONERS' RIGHT TO LIFE AND PERSONAL INTEGRITY AS PROTECTED UNDER ARTICLE I OF THE AMERICAN DECLARATION.**

As a result of the U.S. Navy's occupation of the island of Vieques and its environmental contamination, the Petitioners' human right to life has been seriously harmed. The bombardment of the island for more than six decades has caused devastating consequences to the environment, affecting the daily life of residents and exposing them to a higher risk of suffering from cancer and other serious illnesses. In spite of the gravity of the situation, the State's inadequate responsiveness shows an evident disregard for the human right to life in contravention of its international obligations under the American Declaration.

Article I of the American Declaration of the Rights and Duties of Man states "[e]very human being has the right to life, liberty and the security of his person." This right has been universally recognized as paramount to the fulfillment of all other human rights. It is of such fundamental importance that a wide array of international human rights instruments provide for its protection, including, among others:

- Art. 4 of the American Convention
- Art. 3 of the Universal Declaration of Human Rights

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<sup>76</sup> One of the limited public admissions regarding toxic substances came in 1999, in response to a Freedom of Information Act (FOIA) request by the Military Toxics Project, when the Navy admitted to having fired depleted uranium projectiles on Vieques on one occasion. *See supra* note 17.

- Art. 6 of the International Covenant on Civil and Political Rights

The Inter-American Commission on Human Rights (the “Commission”) has stated “without full respect for [the right to life] no other human right or freedoms may be effectively guaranteed or enjoyed.”<sup>77</sup> The Commission has also noted that the right to life is an obligation *erga omnes* and can never be suspended.<sup>78</sup>

Similarly, the Inter-American Court for Human Rights (the “Court”) has expressed that the right to life is the most fundamental human right, “for which realization of other rights depend on this one.”<sup>79</sup> This right is based on two basic principles: first, the right of every human being not to be arbitrarily deprived of his life; and second, “the right that [a person] will not be prevented from having access to the conditions that guarantee a dignified existence.”<sup>80</sup>

Both the Commission and the Court have interpreted the right of life amply, making clear that “approaches that restrict the right of life are not admissible.”<sup>81</sup> Both bodies have also interpreted the scope of protection of the right to life as to include living conditions that ensure a decent existence. In this regard, the Court has noted:

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<sup>77</sup> *Report on Terrorism and Human Rights*, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., 81 (2002).

<sup>78</sup> *Report on the situation of human rights in Amayapampa, Llallagua and Capasirca, Northern Potosi, Bolivia*, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II, Doc. 8 rev. 1, paras. 161-162 (1997).

<sup>79</sup> *Yakye Axa indigenous community of the Enxet-Lengua people v. Paraguay* (“Yakye Axa”), Inter-Am. Ct. H.R., Case 12.313, No. 2/02, Doc. 5 rev. 1, 161 (2002); *Caso de los Hermanos Gómez Paquiyaui v. Peru*, Inter-Am. Ct. H.R., Sentence of July 8, 2004, (Ser. C) No. 110, 128 (2004); *Myrna Mack Chang v. Guatemala*, Inter-Am. Ct. H.R., Judgment of November 25, 2003, (Ser. C) No. 101, 152 (2003); *Caso Villagrán Morales Otros v. Guatemala (Caso de los “Niños de la Calle”)*, Inter-Am Ct. H.R., Judgment of May 26, 2001, (Ser. C) No. 77, 144 (2001).

<sup>80</sup> *Caso Instituto de Reeduccion del Menor v. Paraguay*, Inter-Am Ct. H.R., Sentence of September 2, 2004, (Ser. C) No. 112, 156 (2004), *Villagrán Morales*, at 144; *Yake Axa*, at 161; *Hermanos Gómez*, at 128.

<sup>81</sup> *Instituto de Reeduccion del Menor*, at 159; *Yake Axa*, at 162.

One of the obligations that the State must inescapably undertake as guarantor, to protect and ensure the right to life, is that of generating minimum living conditions that are compatible with the dignity of the human person and of not creating conditions that hinder or impede it. In this regard the State has the duty to take *positive, concrete measures geared toward fulfillment of the right to a decent life, especially in the case of persons who are vulnerable and at risk, whose care becomes a high priority.*<sup>82</sup>

1. The right to life and to conditions that guarantee a dignified existence

Under the American Declaration, States have a duty to respect the right to life (negative obligation), but also to adopt all appropriate measures to protect and preserve it (positive obligation).<sup>83</sup> The right to life is not limited to the mere existence as a human being, but extends to the conditions created or permitted by the States to make effective the enjoyment of this right with dignity.

The jurisprudence of the Inter-American Commission and Court have addressed the positive obligation of protecting and preserving the right to life in cases dealing with conditions of detention and detainees,<sup>84</sup> indigenous populations,<sup>85</sup> and other vulnerable populations including street children,<sup>86</sup> women and girls.<sup>87</sup>

In the case *Villagrán Morales*, Judges Cancado Trindade and Abreu-Burelli explained the contours of this positive obligation in their concurring opinion:

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<sup>82</sup> *Yake Axa*, at 162 (emphasis added).

<sup>83</sup> *Case of the 19 Tradesmen v. Colombia*, Inter-Am Ct. H.R., Sentence of July 5, 2004, (Ser. C) No. 109, 153 (2004); *Instituto de Reeduccion del Menor*, at 158; *Hermanos Gómez*, at 129; *Myrna Mack Chang*, at 153.

<sup>84</sup> *Case of the Miguel Castro-Castro Prison v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 160, 315 (Nov. 25, 2006).

<sup>85</sup> *Yake Axa*, at 162.

<sup>86</sup> *Villagrán Morales*, at 144.

<sup>87</sup> *Case of the Serrano-Cruz Sisters v. El Salvador*, Inter-Am. Ct. H.R. (ser. C) No. 120, (Mar. 1, 2005).

The duty of the State to take positive measures is stressed precisely in relation to the protection of life of vulnerable and defenseless persons, in situation of risk, such as the children in the streets. The arbitrary deprivation of life is not limited, thus, to the illicit act of homicide; it extends itself likewise to the deprivation of the right to live with dignity. This outlook conceptualizes the right to life as belonging, at the same time, to the domain of civil and political rights, as well as economic, social and cultural rights, thus illustrating the interrelation and indivisibility of all human rights.<sup>88</sup>

Accordingly, under the American Declaration the right to life requires States to provide a set of minimum conditions that would ensure a dignified existence.

2. The positive obligation of States to prevent and correct environmental conditions that may endanger the right to life.

The Commission has recognized a link between environmental conditions and the right to life. In *Yanomami vs. Brazil*, the Commission found that State actions created environmental conditions that infringed upon the indigenous community's rights to life, and required the State to adopt preventive and corrective measures in order to halt further violations.<sup>89</sup> Similarly, in its 1996 country report on Ecuador, the Commission stressed that "conditions of severe environmental pollution, which may cause serious physical illness, impairment and suffering on the part of the local populace, are inconsistent with the right to be respected as a human being."<sup>90</sup>

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<sup>88</sup> Joint Concurring Opinion of Judges A.A. Cancado Trindade and A. Abreu-Burelli, *Caso Villagrán Morales Otros v. Guatemala*, Inter-Am Ct. H.R., Sentence of November 19, 1999, (Ser. C) No. 77, 4.

<sup>89</sup> Inter-Am. Comm'n H.R., Resolution 12/85, Case No.7615 (Brazil), March 5, 1985.

<sup>90</sup> *Report on the Situation of Human Rights in Ecuador 1996*, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.96, Doc. 10 rev.1, April 24, 1997, available at: <http://www.cidh.org/countryrep/ecuador-eng/index%20-%20ecuador.htm>.

One of the most relevant international declarations on the right to life in cases that deal with environmental issues is the Declaration of the United Nations Conference on the Human Environment, also called the Stockholm Declaration, which recognizes that there is an inherent relationship between the environment (both natural and man-made) and the enjoyment of the basic human right to life.<sup>91</sup> The Stockholm Declaration's first principle reads:

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.<sup>92</sup>

This principle sheds light on how the Commission should interpret the protection of the right to life in the instant case, where the United States has knowingly altered natural conditions with disregard of its harmful effects on human beings.

3. The United States has the obligation to protect the life of residents in Vieques, eliminate the risk of further contamination and guarantee decent conditions of life.

Per the facts of the case mentioned above, studies show that Vieques has a near 30% higher cancer rate than the rest of Puerto Rico and that residents of Vieques have a higher rate of other serious health conditions such as hypertension (381%) and diabetes (41%). Additionally, Viequenses have a 55% higher infant mortality rate and 95% higher cirrhosis rate than the rest of mainland Puerto Rico. These alarming numbers are closely linked to the presence of heavy

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<sup>91</sup> Stockholm Declaration of the United Nations Conference on the Human Environment, U.N. Doc. A/Conf.48/14/Rev. 1(1973); 11 ILM 1416 (1972). Part I of the Declaration proclaims that “[m]an is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth.”

<sup>92</sup> *Id.*

metals and contaminants found in soil, plants, water and livestock. Additional studies have shown presence of heavy metals in the hair of residents of Vieques. Harmful agents have transcended the military practice areas and can be found in various residential areas.

Living conditions for the residents of Vieques have also deteriorated due to the damage caused to the agriculture and fishing industries as a result of the toxics released from the Navy's military practices. These industries have been greatly affected by the environmental contamination left by military practices and further exacerbated by the open air detonation of bombs during the current removal and cleaning process. One of the methods used in the cleanup process involves the open-air burning of vegetation as a cost-effective means to facilitate the search of bombs and other debris. According to local scientists, this method poses new hazards to the environment and to Vieques' residents:

[t]he burning of vegetation that grew in a natural way in the old firing range would represent an imminent health risk for the residents of (...) Vieques. In addition, the burning represents the removal of a natural barrier against erosion of contaminated soil to the marine ecosystem. This form of "cleansing" where chemical contaminants (...) are released to the air by burning and exposing other ecosystems and the residents of the island itself is irresponsible, unacceptable and illegal.<sup>93</sup>

The United States knowingly exposed the residents of Vieques to living conditions that endangered their right to life. Per Inter-American jurisprudence, the United States has a duty to adopt all necessary measures to avoid further contamination and to provide adequate reparations for the infringement of the right to life. For these reasons, we ask that the Commission admit

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<sup>93</sup> Díaz de Osborne, et al., *supra*.

this claim and find the United States in violation of Petitioners' most essential human rights, the right to life, liberty and personal security as protected under Article I of the American Declaration on the Rights and Duties of Man.

**B. THE UNITED STATES CREATED ENVIRONMENTAL CONDITIONS THAT ENDANGER THE HEALTH AND WELL-BEING OF VIEQUES RESIDENTS IN VIOLATION OF ARTICLE XI OF THE AMERICAN DECLARATION.**

Article XI of the American Declaration proclaims that “[e]very person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.” This right is also recognized in numerous international instruments, including the Universal Declaration of Human Rights (“[e]veryone has the right to a standard of living adequate for the[ir] health and well-being”)<sup>94</sup> and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) (which defines the right to health as “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”)<sup>95</sup> Subsequent international and regional human rights instruments have similar provisions.<sup>96</sup>

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<sup>94</sup> Universal Declaration of Human Rights, Art. 25(1), *adopted* Dec. 10, 1948, art. 16, 1, G.A. Res. 217A(III) [hereinafter “Universal Declaration”].

<sup>95</sup> International Covenant on Economic, Social and Cultural Rights [hereinafter “ICESCR”] *adopted* Dec. 16, 1966, G.A. res. 2200a (XXI), U.N. GAOR, 21<sup>st</sup> Sess., Supp. No. 16, U.N. Doc. a/6316 (1966), 993 U.N.T.S. 3 (*entered into force* Jan. 3, 1976).

<sup>96</sup> International Convention on the Elimination of all Forms of Racial Discrimination [hereinafter “CERD”], *adopted* Dec. 21, 1965, G.A. Res. 2106 (XX), Art. 5, 660 U.N.T.S. 195 (*entered into force* Jan. 4, 1969); ICESCR, Art. 12; Convention on the Elimination of all Forms of Discrimination against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34<sup>th</sup> Sess., Supp. No. 46, at 193, arts. 11 (1) (f), 12, 14 (2) (b), U.N. Doc. a/34/46, (1979) (*entered into force* Sept. 3, 1981) [hereinafter “CEDAW”]; Convention on the Rights of the Child, *adopted* Nov. 20, 1989, G.A. Res. 44/25, Annex, U.N. GAOR, 44<sup>th</sup> Sess., Supp. No. 49, art. 25, U.N. Doc. a/44/49 (1989), *reprinted*

When applying the American Declaration, the Commission often looks at other international instruments that may aid in the interpretation of specific human rights protections. The Commission has also previously held that “the jurisprudence of other international supervisory bodies can provide constructive insights into the interpretation and application of rights that are common to regional and international human rights systems.”<sup>97</sup> Accordingly, in its analysis of the present case, the Commission may interpret and apply the pertinent provisions of the American Declaration in light of current developments in the field of international human rights law, as evidenced by treaties, custom and other relevant sources of international law.

1. Inter-American case law recognizes a human right to health and well-being.

The Inter-American case law recognizes the interdependency between the rights to life, personal integrity and dignity and the right to health and well-being. In general, the right to health and well-being has been interpreted as an essential component of the right to life, without which is impossible to ensure protection for the dignity of the person. More importantly, the Commission has found independent and autonomous violations to the right to health and well-being. In the case of the *Yanomami Indigenous Community*, decided in 1985, the Commission found that the construction of a highway through Yanomami Territory and the authorization for

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in 28 I.L.M. 1448 (*entered into force* Sept. 2, 1990) [hereinafter “CRC”]; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *adopted* Dec. 18, 1990, G.A. Res. 45/158, arts. 28, 43 (e) and 45 (c) (*entered into force* July 1, 2003) [hereinafter “Migrant Workers Treaty”]; Convention on the Rights of Persons with Disabilities, *adopted* Jan. 24, 2007, art. 25, G.A. Res. 61/106, U.N. Doc.

A/RES/61/106 (*entered into force* May 3, 2008) [hereinafter “CRPD”].

<sup>97</sup> *Annual Report of the IACHR 1994*, Inter-Am. Comm’n H.R., OEA/Ser.L/V.88 (February 17, 1995); *Victor Rosario Congo v. Ecuador*, Inter-Am. Comm’n H.R., Case 11.427, Report No. 63/99, OEA/Ser.L/V/II.95 Doc. 7 rev. at 475 (1998), Inter-Am. Comm’n H.R., *Annual Report of the IACHR 1998*, OEA/Ser.L/V/II.102 (April 16, 1999).

the exploitation of resources resulted in the contamination of the land and an influx of contagious diseases. The Commission explained that “by reason of the failure of the Government of Brazil to take timely and effective measures on behalf of the Yanomami Indians, a situation has been produced that has resulted in the violation” of several human rights, including the right to the preservation of health and well-being.<sup>98</sup>

The Commission has also addressed the human right to health in its country report on Ecuador.<sup>99</sup> In this report, the Commission addressed claims of oil exploration activities that resulted in the contamination of natural resources and caused adverse health effects to the inhabitants in the region. The report observes that where severe environmental pollution poses a threat to the life, health and security of persons, States have a duty to take effective measures to prevent risk and offer reparations to persons that have already suffered injuries.<sup>100</sup>

The intrinsic relationship between the rights to life, personal integrity and dignity with the right to health becomes particularly relevant in the context of Precautionary Measures (PM). In numerous occasions, the urgent intervention of the Commission has been essential to guarantee the right to health and wellbeing of, *inter alia*, prison inmates,<sup>101</sup> children,<sup>102</sup>

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<sup>98</sup> Comunidad Yanomami, No. 7615, Resolution No. 12/85 (1985); *1984-1985 Annual Report* 24, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.66, doc. 10, rev. 1 (1985).

<sup>99</sup> *Report on the Situation of Human Rights in Ecuador 1996*, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.96, Doc. 10 rev.1, 24 (1997).

<sup>100</sup> *Id.*

<sup>101</sup> *Luis Alvarez Rentá, Dominican Republic*, Precautionary Measures, Inter-Am. Comm’n H.R., PM 393/10 (2010) (“Instruct the competent authorities to provide medical tests to evaluate the beneficiarie’s health and authorize proper treatment of his ailments.”)

<sup>102</sup> *X v. Argentina*, Precautionary Measures, Inter-Am. Comm’n H.R., PM 423/10 (2010) (requesting that Argentina ensure “necessary medical attention so that the beneficiary can develop a quality life and dignity.”)

indigenous communities,<sup>103</sup> internally displaced persons,<sup>104</sup> and women and girls.<sup>105</sup> On a recent precautionary measure granted against El Salvador, the Commission expressly recognized the right to health. In PM 114/13, a pregnant woman was at risk of death due to the deprivation of specific medical treatment, and the Commission “granted precautionary measures to protect [her] life, personal integrity and health.”<sup>106</sup>

Similarly, in situations of environmental contamination that seriously compromise human health, the Commission has requested states to adopt a wide scope of measures directed at the protection of this right. In 2009, the Commission granted urgent measures to protect 300 inhabitants of Puerto Nuevo in Perú who were exposed to high levels of lead.<sup>107</sup> The measures requested Perú “eliminate the situation of environmental contamination” and “provide specialized medical diagnostic services for the beneficiaries as well as appropriate and specialized medical treatment.”<sup>108</sup> Likewise, in 2007 indigenous communities were affected by mining concessions that resulted in the contamination of water sources.<sup>109</sup> The Commission granted urgent measures requesting the State of Guatemala to decontaminate the water and to

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<sup>103</sup> *Members of the Lof Paichil Antriao Community of the Mapuche Indigenous People, Argentina*, Precautionary Measures, Inter-Am. Comm’n H.R., PM 269/08 (2008) (“[requesting] that the State adopt the necessary measures to look after the health of the community families that are displaced . . .”); *Indigenous Communities of the Xingu River Basin, Pará, Brazil*, Precautionary Measures, Inter-Am. Comm’n H.R., PM 382/10 (2010) (“Adopt measures to protect the health of the members of the Xingu Basin indigenous communities affected by the Belo Monte project”).

<sup>104</sup> *Women and Girls residing in 22 Camps for internally displaced persons in Port-au-Prince, Haiti*, Precautionary Measures, Inter-Am. Comm’n H.R., PM 340/10 (2010) (calling on the State “to ensure the availability of adequate medical and mental health care for the victims of sexual violence”).

<sup>105</sup> *B, El Salvador*, Precautionary Measures, Inter-Am. Comm’n H.R., PM 114/13 (2013).

<sup>106</sup> *B, El Salvador*, Precautionary Measures, Inter-Am. Comm’n H.R., PM 114/13 (2013).

<sup>107</sup> *300 Inhabitants of Puerto Nuevo, Perú*, Precautionary Measures, Inter-Am. Comm’n H.R., PM 199/09 (2009).

<sup>108</sup> *Id.*

<sup>109</sup> *Communities of the Maya People, Guatemala*, Precautionary Measures, Inter-Am. Comm’n H.R., PM 260/07 (2007).

“address the health problems,” “begin a health assistance and health care program” and provide “appropriate medical attention.”<sup>110</sup>

Overall, although many of these resolutions call for measures directed toward the protection of the right to life and personal integrity, it is clear that the Commission considers the right to health as an autonomous right that requires specific measures derived from the duties imposed on States in the American Declaration and as an essential component of the right to life.

2. The human rights to health and a healthy environment are recognized in various international human rights instruments.

Although the right to a healthy environment is not directly recognized by the American Convention nor the American Declaration of the Rights and Duties of Man, it is recognized as a fundamental human right in international doctrine and instruments. In the Americas, Article 11 of the Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador) refers to a healthy environment as a human right. In other international human rights instruments, the right to health is linked to the right to a healthy environment.

As early as 1946, the World Health Organization (WHO) stated in its Constitution that health is a basic human right:

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. The enjoyment of the highest

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<sup>110</sup>*Id.*

attainable standard of health is one of the fundamental rights of every human being without distinction of race, political belief, economic or social condition.<sup>111</sup>

The right to health contributes to, and is dependent upon the realization of many other human rights. The Committee on Economic, Social and Cultural Rights (CESCR), the main international body that monitors the realization of the right to health, has defined the right to health as “a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.”<sup>112</sup> Similarly, Principle 1 of the Stockholm Declaration declares that “[m]an has the fundamental right to freedom, equality and adequate conditions of life, *in an environment of a quality that permits a life of dignity and well-being.*”<sup>113</sup> Thus, the right to health is seen as critical in bridging environmental protection and human rights.<sup>114</sup>

Other international human rights treaties also address the right to health and a healthy environment and note that vulnerable populations are particularly affected by the denial of such rights. The Convention on the Rights of the Child (CRC) addresses aspects of environmental protection with respect to the child's right to health, including Article 24 which provides that

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<sup>111</sup> World Health Organization (WHO), Constitution, preamble, par. 1, 2, *adopted by* the International Health Conference (July 19-22, 1946).

<sup>112</sup> Committee on Economic, Social, and Cultural Rights, General Comment No. 14, The right to the highest attainable standard of health, ¶¶12, 34, 36, 43, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000), para. 1. Available at:

<http://documents-ddsny.un.org/doc/UNDOC/GEN/G00/439/34/pdf/G0043934.pdf?OpenElement>

<sup>113</sup> *Id.*

<sup>114</sup> At the Stockholm concluding session, the participants proclaimed that “[m]an is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth... Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself.” Stockholm Declaration of the United Nations Conference on the Human Environment, U.N. Doc. A/Conf.48/14/Rev. 1(1973); 11 ILM 1416 (1972).

States shall take appropriate measures to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution.” The CRC recognizes that the right to health and a healthy environment are linked to the right of access to information and states that information and education are to be provided to all segments of society with regard to hygiene and environmental sanitation.<sup>115</sup>

The jurisprudence of the European human rights system has also addressed the right to health in relation to other human rights. In several cases, the former European Commission on Human Rights decided that environmental harm attributable to state action or inaction that has significant injurious effect on a person’s private and family life constitutes a violation of other human rights. *In Lopez-Ostra v. Spain*, the applicants suffered serious health problems from the fumes of a tannery waste treatment plant that operated alongside their residence.<sup>116</sup> The European Human Rights Court concluded that severe environmental pollution might affect an individual’s well-being and prevent them from enjoying their private and family life. This judgment was later reaffirmed in *Guerra and Others vs. Italy*.<sup>117</sup>

The human right to health and well-being is not a right to “be healthy,”<sup>118</sup> but rather the right not to be exposed to conditions that endanger or pose a more than normal risk to health. International bodies recognize that there are obstacles and “factors beyond the control of States

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<sup>115</sup> Art. 24(2) (c), Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>116</sup> *Lopez-Ostra v. Spain*, App. No. 1679890, Eur. Ct. H.R. (1994).

<sup>117</sup> *Guerra and Others v. Italy*, App. No. 14967/891998-1, Eur. Ct. H.R., Judgment (1998).

<sup>118</sup> ESCR Committee, *General Comment No. 14*, E/C.12/2000/4, para. 8 (2000). *General Comment No. 14*, para. 8.

that impede the full realization of [the right to health].”<sup>119</sup> However, even in those situations States still have a duty to protect the life and security of the persons in their territory by preventing further harm, ameliorating the injuries already affected and providing adequate reparations.

For that reason, CESCR has stated that the right to the “highest attainable standard of health” should be analyzed in conjunction to both the individual’s biological and socio-economic preconditions and the available resources of the State.<sup>120</sup> States cannot ensure their citizens good health, nor can they prevent every possible illness, but they can and should provide “the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.”<sup>121</sup>

3. The environmental contamination of Vieques has disproportionately affected the right to health of its residents, in violation of the right to health and well-being in relation to the rights to life, personal integrity and dignity.

The Commission has consistently applied a *pro homine* analysis that allows for the most protective interpretation of the human right in question. It has also stated that human rights are interdependent; hence they should not be interpreted in a way that restricts the full enjoyment of other rights. As discussed, in situations when the victim’s health is compromised by actions or inactions of the State, several human rights are affected, including the right to life, personal

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<sup>119</sup> *Id.*, para. 9.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

integrity, dignity, health and well-being. These rights are interdependent, indivisible<sup>122</sup> and interrelated<sup>123</sup> and should be applied in a manner that provides the most comprehensive protection.

In the instant case, the severity of the diseases and medical conditions affecting Petitioners, and the majority of Viequenses, combined with the lack of adequate medical services, have greatly impeded their ability to carry out their quotidian responsibilities. One of the cases documented in this petition is that of Petitioner Wanda Bermudez, who was born and raised in Vieques and comes from a family that has resided in the island for generations. At the age of 51, she suffers from numerous respiratory illnesses that worsen by the day and require constant hospitalization. She has suffered from esophageal cancer and a tumor that required two surgical operations. Her current condition requires her to travel to the mainland for medical visits several times each month. She is, and has been for a number of years, a prescribed user of specialized medications. In the past two years, Ms. Bermudez has been hospitalized for pneumonia and has a higher than average probability of suffering from respiratory infections on a monthly basis. For example, in early 2013 she suffered from a lung infection caused by bacteria. In the absence of other scientific factors that may explain the higher cancer rates as well as of other chronic diseases in Vieques, the medical conditions that Ms. Bermudez and other

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<sup>122</sup> “Universality and indivisibility” were universally recognized in the 1968 Proclamation of Teheran and reinforced in the Vienna Declaration during the 1993 World Conference on Human Rights. *Vienna Declaration and Programme for Action*, World Conference on Human Rights, Vienna, Austria, June 14–25, 1993, U.N. Doc. A/CONF.157/23 (1993) [herein- after Vienna Declaration].

<sup>123</sup> *Id.*

residents endure can be reasonably attributed to the toxic pollutants left by the United States Navy and the lack of proper decontamination efforts.

This situation is exacerbated by the fact that neither the United States government nor the local government of Puerto Rico has adopted the necessary measures to prevent further violations to the right to health—including the provision of adequate medical services and medicine—or to repair the harm already endured by Vieques. Vieques does not have a proper medical facility equipped to treat the degree and severity of the health issues suffered by its population. On the contrary, it has a small clinic that only provides basic medical attention on an outpatient facility. This glaring lack of access to basic, much less specialized, medical services means that cancer patients are forced to travel repeatedly to mainland Puerto Rico via ferry or move there indefinitely in order to receive proper medical care. The burden of seeking necessary healthcare afar aggravates their already weary physical, emotional, and economic burdens.

The majority of chronic health problems in Vieques are related to the pollution and contamination caused by the hazardous chemical agents within the artillery used by the United States Navy for six decades during their military practices on the island. The disparities in the health statistics for mainland Puerto Rico and Vieques, as well as the high presence of toxic metals and other contaminants in the environment that are found in the munitions used by the Navy, easily demonstrate that the Navy is the source of such contamination and the resulting health conditions.

Because the United States and local authorities have acted in blatant and repeated disregard for Petitioners' human rights, we ask that the Commission admit this claim and find the

U.S. in violation of Petitioners' right to health and well-being as protected under article XI of the American Declaration in relation to the rights to life, personal integrity and dignity.

**C. THE UNITED STATES VIOLATED PETITIONERS' RIGHT OF ACCESS TO INFORMATION IN VIOLATION OF ARTICLE IV OF THE AMERICAN DECLARATION.**

The United States' refusal to provide complete information on contaminants used or existing in Vieques is in violation of article IV of the American Declaration, which establishes that "[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever." The right to freedom of expression is recognized in several international treaties, as well as in various declarations and resolutions. This right is of significant importance in the Inter-American system. The American Democratic Charter indicates "transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy."

The Commission has consistently affirmed that

[a]ccess to public information is a requisite for the very functioning of democracy, greater transparency, and good governance and that, in a representative and participatory democratic system, the citizenry exercises its constitutional rights, inter alia, the rights to political participation, the vote, education, and association, by means of broad freedom of expression and free access to information.

Moreover, the Court has indicated that freedom of expression constitutes the pillar of democratic societies, noting that

[w]ithout effective freedom of expression, exercised in all its forms, democracy is enervated, pluralism and tolerance start to deteriorate, the mechanisms for control

and complaint by the individual become ineffectual and, above all, a fertile ground is created for authoritarian systems to take root in society.

The right to freedom of expression comprises a dual dimension: “the individual one, which consists in the right to disseminate information and the social one, that consists in the right to seek, receive and disseminate information and ideas of all types.”<sup>124</sup> In 2008, the Organization of American States adopted the Principles on Access to Information, recognizing it as a fundamental right<sup>125</sup> essential in the exercise of democracy.<sup>126</sup> Its scope of protection includes the right to “access information from public bodies, subject only to a limited regime of exceptions in keeping with a democratic society and proportionate to the interest that justifies them.”<sup>127</sup>

With regard to State-controlled information pertaining to the environment, the Rio Declaration on Environment and Development states in its Principle 10 that

[e]nvironmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making

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<sup>124</sup> López Alvarez Case, 2006 Inter-Am. Ct. H.R., (ser. C) No. 141 at. 57 (Feb. 1, 2006); Cf. Ricardo Canese Case, 2004 Inter-Am. Ct. H.R., (ser. C) No. 111 at. 54 (Aug. 31, 2004); Cf. Herrera Ulloa Case, 2004 Inter-Am. Ct. H.R., (ser. C) No. 107 at. 63 (July 2, 2004) and Ivcher Bronstein Case, 2001 Inter-Am. Ct. H.R. (ser. C) No. 74 at. 56 (Feb. 6, 2001); See also: The Inter-American Legal Framework regarding the right to freedom of expression, Office of the Special Rapporteur for the Freedom of Expression Inter-American Commission on Human Rights. OEA/Ser.L/V/II CIDH/RELE/INF. 2/09 December 30, 2009, at para. 27.

<sup>125</sup> CJI/RES. 147 (LXXX-III-O/08), OAS/Ser.Q (Aug. 7, 2008), Principle 1 of the Principles on the Right of Access to information.

<sup>126</sup> G.A Res. 1932 (XXXIII –O/03), OAS Doc. (June 10, 2003) Resolution AG/RES. 1932 (XXXIII-O/03) of June 10, 2003 on Access to Public Information: Strengthening Democracy.

<sup>127</sup> *Principles on the Right of Access to Information*, Organization of American States, (Ser. Q), CJI/RES. 147 (LXXXIII-O/08) (2008).

processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Although the right to access information in the control of the State is a fundamental right, it is not absolute.<sup>128</sup> There are limited exceptions to this right, as defined in Principle 4 of the Declaration of Principles on Freedom of Expression.<sup>129</sup> Despite these limitations, the Court stated

[i]n cases of violations of human rights, the State authorities cannot resort to mechanisms such as official secret or confidentiality of the information, or reasons of public interest or national security, to refuse to supply the information required by the judicial or administrative authorities in charge of the ongoing investigation or pending procedures.<sup>130</sup>

Additionally, the Commission and Court have consistently applied the principles of maximum disclosure and good faith to the right of access to information. According to the principle of maximum disclosure, all information of public interest is presumed to be accessible.

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<sup>128</sup> Kimel Case, 2008 Inter-Am. Ct. H.R. (ser. C) No. 177 at. 54 (May 3, 2008); Palamara-Iribarne Case, 2005 Inter-Am. Ct. H.R. (ser. C) No. 135 at. 67 (Nov. 22, 2005); Herrera Ulloa Case, *supra*, at. 66 (July 2, 2004); Tristán Donoso Case, 2009 Inter-Am. Ct. H.R. (ser. C) No. 193 at. 34 (Jan. 27, 2009); Ríos et al. Case, 2009 Inter-Am. Ct. H.R. (ser. C) No. 194 at. 30 (Jan. 28, 2009); Perozo et al. Case, (2009) Inter-Am. Ct. H.R. (ser.C) No. 195 at. 33 (Jan. 28, 2009); IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

<sup>129</sup> Declaration of Principles on Freedom of Expression, Organization of American States, Principle 4 (“This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”); Organization of American States, Declaration of Principles on Freedom of Expression, principle 4. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=26&IID=1>.

<sup>130</sup> Gomes Lund Case, (2010) Inter-Am. Ct. H.R. (ser. C) No. 219 at. 77 (Nov. 24, 2010); *Cf.* Myrna Mack Chang Case, (2003) Inter-Am. Ct. H.R. (ser. C) No. 101 at. 103 (Nov. 25, 2003); *Cf.* Tiu Tojin Case, (2009) Inter-Am. Ct. H.R. (ser. C) No. 190 at. 26 (Nov. 26, 2008); *Cf.* Radilla Pacheco Case, (2009) Inter-Am. Ct. H.R. (ser. C) No. 209 at. 75 (Nov. 23, 2009).

The Court has established that having access to such information is essential to guarantee informed participation in public matters, stating that:

the State's actions should be governed by the principles of disclosure and transparency in public administration that enable all persons subject to its jurisdiction to exercise the democratic control of those actions, and so that they can question, investigate and consider whether public functions are being performed adequately. Access to State-held information of public interest can permit participation in public administration through the social control that can be exercised through such access.<sup>131</sup>

In this regard, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters declares that in order to live adequately, citizenry shall have access to information and participate in decision-making processes.<sup>132</sup> Similarly, the United Nations Special Rapporteur on Freedom of Expression has expressed that access to information “is [ ] a right that gives meaning to the right to participate, which has been acknowledged as fundamental to the realization of all human rights.”<sup>133</sup>

According to the IACHR Rapporteur for Freedom of Expression, in order for States to fully respect the right of access to information, they must: 1) respond in timely, complete and

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<sup>131</sup> *Claude-Reyes et al. v. Chile*, Inter-Am. Ct. H.R., Sentence of September 19, 2006 (Ser. C) No. 151 at. 43.

<sup>132</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (“Aarhus Convention”), 2161 UNTS 447; 38 ILM 517 (1999); Council of Europe, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998. Available at: <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>; The Rio Declaration also establishes that people must have the opportunity to participate in decision-making processes. United Nations, Río Declaration on Environment and Development, *supra*.

<sup>133</sup> United Nations, OHCHR, Statement by the UN Special Rapporteur on freedom of expression, Right to know: an entitlement for all, not a favour (May 3, 2010). Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10011&LangID=E>.

accessible manner to requests; 2) offer a legal recourse that satisfies the right to access of information; 3) provide an adequate and effective legal remedy for reviewing denials for requests of information; 4) comply with the obligation of active transparency; 5) produce or gather information; 6) create a culture of transparency; 7) comply with the obligation of adequate implementation; and, 8) adjust domestic legislation to the demands of right of access to information.<sup>134</sup>

1. The United States has failed to fully disclose the type, usage, frequency, location, impact and effects of the munitions and contaminants used by the Navy for sixty years, as well as the practices of other State's military bodies who were lessees of the base, in Vieques.

In the instant case, the United States government has refused divulge important information concerning its military practices in Vieques and the extent to the Navy used contaminants that have created grave environmental and health conditions. The Navy continues to block full and comprehensive public access to the record of armaments usage in Vieques, and has not provided or revealed information on the frequency of their use. Rather, the Navy has only released limited information concerning the contaminants released from the constant bombing and biochemical warfare. The United States naval force has withheld critical information pertaining to the health and environmental impact of the Navy's practices that is essential to guaranteeing the effective, full and informed participation of Viequenses in decision-making

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<sup>134</sup> The Inter-American Legal Framework regarding the right of access to information. Office of the special rapporteur for Freedom of Expression Inter-American Commission on Human Rights. OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12 (March 7, 2011).

processes. These actions and omissions constitute a gross violation to the right of access to information as a corollary of the right to freedom of expression.<sup>135</sup>

After various attempts to obtain access to this information, only recently in June 2013 did the United States House of Representatives add an amendment to the National Defense Authorization Act (NDAA), requiring the Department of Defense to prepare a public description of the military munitions used by the Navy during their presence on Vieques.<sup>136</sup> The amendment requests information on the types and quantity of munitions and the location in which they were used. The fact that a congressional amendment is required to mandate the release of pertinent information underscores the absolute vacuum of comprehensive disclosures concerning the Navy's practices and the denial of information despite requests from Petitioners, residents of Vieques, Puerto Rican government officials and scientists.

The lack of access to information has led to an uninformed citizenry who are unable to fully participate in processes that are of deep personal concern to them. The Federal Facilities Agreement for Vieques established a forum to include citizen oversight called the Restoration Advisory Board ("RAB"), which holds trimester meetings to inform the residents of Vieques of

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<sup>135</sup> United Nations, OHCHR, Statement by the UN Special Rapporteur on freedom of expression, Right to know: an entitlement for all, not a favour (May 3, 2010). Available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10011&LangID=E>.

<sup>136</sup> Sec. 334, Ordnance Related Records Review and Reporting Requirement for Vieques and Culebra Islands, Puerto Rico, H.R. 1960, 113<sup>th</sup> Cong. (2013). The bill must first pass both houses of Congress and be signed by the President with the amendment fully in tact in order to become law; See also: Press Release, U.S. House Approves Three Amendments Filed by Pierluisi to the National Defense Authorization Act, June 14, 2013. Available at: <http://pierluisi.house.gov/media-center/press-releases/us-house-approves-three-amendments-filed-by-pierluisi-to-the-national>

the cleanup plan and progress on its implementation.<sup>137</sup> Although the RAB theoretically provides a space for dialogue with Vieques' residents, it is limited in scope and does not allow for their participation in final decisions. Information concerning meetings and outcomes are not widely publicized on the island and few citizens know about its existence or activities. Moreover, the restriction on disclosed information greatly impairs the capacity of residents to give knowing and informed approval to proposed decontamination plans.

A recent United States Supreme Court decision indicated that the right of access to information is not a fundamental right<sup>138</sup>, and that although this right is guaranteed in domestic legislation<sup>139</sup>, access to information can be limited in specific situations.<sup>140</sup> In the case of Vieques, the clear restriction of access to information is not legally justifiable under international law. In conclusion, Petitioners ask that the Commission admit their claim that the United States has failed to guarantee their fundamental human right to seek, receive and disseminate information, as protected under Article IV of the American Declaration.

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<sup>137</sup> Federal Facilities Agreement, at 62; Also: RAB Documents. Available at: <http://public.lantopsir.org/sites/public/vieques/Community/MostRecentRAB.aspx>

<sup>138</sup> *McBurney vs. Young*, 569 US \_\_\_\_ (2013).

<sup>139</sup> Freedom of information Act, 5 U.S.C. § 552, As Amended By Public Law No. 104-231, 110 Stat. 3048

<sup>140</sup> Freedom of Information Act Exemptions, U.S. Security and Exchange Commission. Exemption 1 and 4. Available at: <http://www.sec.gov/foia/nfoia.htm>; FOIA Exemptions, Homeland Security. Exemption 1 and 4. Available at: <http://www.dhs.gov/foia-exemptions>

**D. THE UNITED STATES HAS DENIED PETITIONERS' RIGHT TO PETITION AND JUDICIAL REMEDIES AS PROTECTED UNDER ARTICLE XVIII OF THE AMERICAN DECLARATION.**

Article XVIII of the American Declaration states:

[e]very person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

This Honorable Commission has reiterated that Article XVIII establishes the right of all persons to access judicial remedies when their human rights have been violated.<sup>141</sup> This right is analogous to the rights of judicial protection and guarantees encompassed in article 25 of the American Convention, which protects: a) the right to raise a judicial claim for human rights violations; b) the right to a judicial investigation conducted by a competent, impartial and independent tribunal that establishes whether or not a violation has taken place; and c) the right to obtain reparations for the harm suffered.<sup>142</sup>

The mere existence of formal judicial mechanisms, however, does not satisfy the criteria established by the Inter-American system. The American Declaration requires States to adopt positive measures to guarantee that the remedies available through their judicial system are truly

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<sup>141</sup> *Jessica Gonzalez Lenahan v. United States*, Inter-Am. Comm'n. H.R., Merits, No. 80/11, para. 172 (July 21, 2011); *Maria Da Penha Maia Fernandes v. Brazil*, Inter-Am. Comm'n. H.R., Report No. 54/01, para. 37 (April 16, 2001).

<sup>142</sup> *Jessica Gonzalez*, at para. 172; *Maya Indigenous Community v. Belize*, Inter-Am. Ct. H.R., Report No. 40/4, para. 174 (Oct. 12, 2004); *Maria Da Penha Fernandes*, para. 37.

effective.<sup>143</sup> Both the Commission and Court have affirmed that when “the State apparatus leaves human rights violations unpunished and the victim’s full enjoyment of human rights is not promptly restored, the State fails to comply with its positive duties under international human rights law.”<sup>144</sup> This failure creates an “independent violation of the right to judicial protection under Article XVIII of the American Declaration.”<sup>145</sup>

### 1. The right to judicial protection

Under the American Declaration, States must ensure access to effective judicial protection where violations of human rights may be adequately addressed.<sup>146</sup> This obligation must be seen in conjunction with the positive duty of States to investigate, prosecute and sanction those responsible for violations of human rights, as well as the duty to redress the ensuing harm.<sup>147</sup>

The State must also adopt measures that safeguard the fair trial protections required for the effective exercise of this right. In this sense, the right to a fair trial is not limited to criminal proceedings, “but extends to the processes that tend to the ‘determination of rights and

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<sup>143</sup> *Wayne Smith, Hugo Armendatriz, et al., v. United States*, Inter-Am. Comm’n. H.R., Merits, Report No. 81/10, para. 62 (July 12, 2010); *Jessica Gonzalez Lenahan v. United States*, Inter-Am. Comm’n. H.R., Report on Admissibility, No. 52/07, 42 Petition 1490-05, para. 42, (July 24, 2007); *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, Doc. 68, para. 26 (January 20, 2007); *Villagrán Morales*, para. 235.

<sup>144</sup> *Jessica Gonzalez*, para. 173; *The Situation of the Rights of Women in Ciudad Juarez*, Inter-Am. Ct. H.R., OEA/Ser. L/V/II.117, para. 51 (March 7, 2003).

<sup>145</sup> *Rafael Ferrer-Mazorra, et al. v. United States*, Inter-Am. Comm.’n. H.R., Merits, No. 51/01, par. 244 (April 4, 2001); *Wayne Smith*, para. 62; *Mayan Indigenous Community*, par. 175 (stating “[t]he Commission has similarly found that the lack of an effective judicial remedy implies, not just an exception to the exhaustion of domestic remedies, but also a violation of the substantive right to judicial protection [Article XVIII] which is upheld by the inter-American human rights system.”)

<sup>146</sup> *Habeas Corpus in Emergency Situations* (Arts. 27(2) and 7(6) of the American Convention on Human Rights), Advisory Opinion OC-8/87, para. 25, Inter-Am. Ct. H.R. (Ser. A) No. 8 (1987).

<sup>147</sup> *Case of Vargas Areco v. Paraguay*. Inter-Am. Ct. H.R. (Ser. C) No. 155; para. 74, (2006).

obligations of a civil, labor, fiscal or any other nature . . . »<sup>148</sup> The right to an effective judicial protection is a right to a simple, fast and effective resource before judges or local courts. This obligation is met only when domestic judicial authorities are able to address human rights violations in an adequate and effective manner that is respectful of due process guarantees.<sup>149</sup>

2. The doctrine of sovereign immunity should not apply as a bar to judicial remedies in cases of human right violations.

As known to the Commission, the United States often relies on the doctrine of sovereign immunity to shield itself from lawsuits seeking relief for human rights violations committed by the government, such as in the case at hand. As the doctrine dictates, the federal government may not be sued unless it has waived its immunity or consented to the suit. The United States has waived immunity only in a limited number of circumstances, including under the Federal Tort Claims Act (FTCA). Under the FTCA, the United States may be liable for injury, death or loss of property “caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.”<sup>150</sup>

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<sup>148</sup> O’Donnell, Daniel, *Protección Internacional de los Derechos Humanos*, Comisión Andina de Juristas, p. 165 (1988).

<sup>149</sup> *Caso Cantos v. Argentina*, Inter-Am. Ct. H.R., Sentence, (Ser. C) No. 97, para. 52 (November 28, 2002).

<sup>150</sup> 28 U.S.C. § 1346 (b) (1)(2006).

However, the language of the statute is limiting.<sup>151</sup> The waiver found in the FTCA is inoperable when the wrong is “based upon the exercise or performance or the failure to exercise or perform *any discretionary function or duty* on the part of the Federal Agency or employee of the government, whether or not the discretion involved [was] abused.”<sup>152</sup> This exception is known as the discretionary function exception, which bars claims against government decisions “grounded in social, economic and political policy.”<sup>153</sup>

In the present case, Petitioners timely filed their grievances against the United States Navy in the United States District Court of Puerto Rico under the FTCA. The District Court dismissed the complaint on grounds of lack of subject matter jurisdiction.<sup>154</sup> In dismissing the case, the federal court found that the act or omissions attributed to the United States Navy that resulted in the harms to the environmental and health of the island and residents of Vieques were “discretionary,” therefore not subject to the waiver of immunity under the FTCA. Petitioners timely appealed this decision, however the District Court’s decision was affirmed by the Court of Appeals for the First Circuit.<sup>155</sup> Petitioners then appealed this determination to the Supreme Court, which declined to address the claim, effectively denying all possibilities for redress.<sup>156</sup>

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<sup>151</sup> 28 U.S.C. § 2680 (h) (2006)

<sup>152</sup> 28 U.S.C. § 2680 (a); *See also* 42 U.S.C. § 5148 (2006) [emphasis added].

<sup>153</sup> *United States v. S.A. Empresa de Viacao Aerea Rio Grandense (Varig Airlines)*, 467 U.S. 797, 814, 104 S.Ct. 2755, 2764, 81 L.Ed. 660 (1984).

<sup>154</sup> *Sanchez v. U.S.*, 707 F. Supp. 2d 216 (D.P.R. 2010) *aff’d sub nom. Sanchez ex rel. D.R.-S. v. U.S.*, 671 F.3d 86 (1st Cir. 2012).

<sup>155</sup> *Sanchez*, 671 F.3d 86 (1st Cir. 2012).

<sup>156</sup> *Sanchez v. U.S.*, 133 S. Ct. 1631, 185 L. Ed. 2d 615 (U.S. 2013).

It is a well-established human rights norm that States are responsible for the acts and omissions of their agents undertaken in their official capacity.<sup>157</sup> The State also has a legal duty to “take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”<sup>158</sup> These international obligations of the State cannot be constrained by considerations of domestic law.

Here the evidence shows that domestic judicial procedures have failed to take effective action to ensure respect for Petitioners’ human rights. Additionally, the State has failed to carry out an effective investigation and fulfill its duties to pay compensation and take appropriate action to punish those responsible.<sup>159</sup>

3. Administrative procedures aimed at providing information about the clean-up process are not a substitute for judicial remedy.

The United States has established a community board identified as the Restoration Advisory Board (“RAB”), which is composed of representatives of the Navy, the Environmental Protection Agency, representatives of the Planning Board from the Commonwealth of Puerto Rico and local residents of Vieques. The RAB holds meetings where they inform Vieques’ residents of the progress and implementation regarding the cleanup of the former naval base,

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<sup>157</sup> *Case of Velasquez Rodriguez v. Honduras*, Inter-Am.Ct.H.R., Judgment of July 29, 1988, (Ser. C) No. 4, para. 170 (1988).

<sup>158</sup> *Id.*, at para. 174

<sup>159</sup> *Id.*

nevertheless such mechanism does not comply with the recognized obligations under article XVIII of the American Declaration.

Specifically, the RAB is a quasi-administrative entity, not a judicial process, and hence traditional due process protections are not available. For example, the residents of Vieques who attend the quarterly meetings are informed of the steps being taken regarding the surface removal and cleanup actions by the Navy. Although theoretically they are able to express their opinions and beliefs on these sensitive issues, they are not allowed to make discovery requests of the RAB. This hinders them from making an informed decision on these serious and complicated matters. And while residents can express their views on how the cleanup efforts should or should not take place, they are not empowered to make the final determination as to how the cleanup process is ultimately effectuated. Similarly, for residents that oppose a decision taken by the RAB, there is no mechanism to appeal, veto or file any claim before a judicial authority challenging such decision. Finally, the limiting scope of the RAB ignores the United States' obligation to investigate the human rights violations committed against Petitioners and prosecute those responsible for such wrongs.

For the above stated reasons, Petitioners have been denied a judicial remedy for the involuntary exposure to chemical contamination in violation of their human rights to life and health. In light of the arguments put forth, we ask that the Commission declare that the effective lack of access to a judicial mechanism, the absence of a diligent investigation of the asserted violations and the denial of just reparations constitute an independent violation of the right to judicial protection under article XVIII of the American Declaration.

**E. THE UNITED STATES VIOLATED PETITIONERS' RIGHT TO RESIDENCE AND FREEDOM OF MOVEMENT IN VIOLATION OF ARTICLE VIII OF THE AMERICAN DECLARATION.**

Article VIII of the American Declaration of Human Rights states that “[e]very person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.” The Commission has defined the right of residence and movement as “the right of every person to live in his own homeland, to leave it and to return to it when he so desires [which] is a basic right recognized by all international instruments for the protection of human rights.”<sup>160</sup> The right of residence and movement has been also recognized by several other international human right instruments.<sup>161</sup>

In its *Report on the Situation of Human Rights in Chile*, the Commission stated that the right to residence and movement is closely linked to the right to personal liberty and identified four essential aspects of this protection: (a) to freely leave any country, including one’s own country; (b) not to be expelled from the territory of the state of which one is a national or

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<sup>160</sup> *Victims of the Tugboat “13 de Marzo” vs. Cuba*, Inter-Am.Ct.H.R., Report No. 47/96, para. 90 (October 16, 1996); *See also Diez Años de Actividades 1971-1981*, General Secretariat of the Organization of American States, p. 327 (1982).

<sup>161</sup> UNDR Art. 13.1 (“[e]veryone has the right to freedom of movement and residence within the borders of each state.”); ICCPR, Art. 12.1 (“[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”); African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, Art. 12.1 (1982), *entered into force* Oct. 21, 1986, (“[e]very individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.”); Article 21.1 of the Treaty on the Functioning of the European Union, 2012/C 326/01, 2008/C 115/01 Art. 21.1 (December 13, 2007) (“[e]very citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.”); Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, Art. 2.1 (“[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”)

deprived of the right to enter it; (c) to choose residence in the country of which one is a national; and (d) to move freely within it.<sup>162</sup>

The Commission has powerfully stated that the right to residence and movement, and consequently the right to live within one's own territory

derives from the social character of the individual, which can be developed only in society and from the finding that this character has been historically expressed in the development of nations as natural communities and in their juridical constitution as State . . . If there is a right that, in principle, is absolute, it is the right to live in one's homeland, so embodied in the human psyche that legal writers call it an "attribute of personality."<sup>163</sup>

In 1982, after an onsite visit to Nicaragua, the Commission published a report addressing a series of events that culminated in the massive transfer of the entire Miskito population from their ancestral lands to the interior of the country.<sup>164</sup> In its report, the Commission discussed the protection of the right to residence and movement and its legitimate suspension in times of emergency.<sup>165</sup> The Commission concluded that:

The forced evacuation of nearly 8,500 people, in some cases in the middle of the night and by armed forces, to create a military zone is only justifiable in the absence of any other alternative to meet a serious emergency<sup>166</sup> . . . The relocation is justified by an emergency situation; therefore, the measure should not outlast the emergency,

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<sup>162</sup> *Report On The Situation Of Human Rights In Chile*, Inter. Am. Comm'n H.R., OEA/Ser.L/V/II.66, Ch. VI, 1 (1985).

<sup>163</sup> *Id.*, para. 5.

<sup>164</sup> *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin* ("Miskito Origin Report"), Inter. Am. Comm'n H.R., OEA/Ser.L./V.II.62 (1983).

<sup>165</sup> Art. 27 of the American Convention allows for the suspension of specific guarantees "during time of war, public danger, or other emergency that threatens the independence or security of a State Party." According to Art. 27 (2), the right to residence and movement is one of the guarantees susceptible of being suspended during times of emergency.

<sup>166</sup> *Miskito Origin Report*, at para. 20.

and termination of the emergency should allow the return of the civilian populace to their original region, if they so desire.<sup>167</sup>

As the right of residence and movement can be suspended during times of emergency, the analysis must turn to the justification for such suspension, along with its duration. Furthermore, when a State effectuates such a restriction on the right of residence and movement, it cannot discriminate and must comply with its other human rights obligations.<sup>168</sup> The preponderant doctrine during ordinary circumstances, however, is that the removal of a population from their place of residence may be valid only if it was done with the consent of the affected population and with “assurances of adequate compensation.”<sup>169</sup>

The former European Commission on Human Rights has also analyzed the bases for the suspension of guarantees in times of emergency. The underlying criteria established in the European system require the existence of a threat that is greater than a mere civil disorder and the real risk of an imminent danger to security.<sup>170</sup> Similarly, the Commission has considered that the suspension to the right of residence and movement should only be valid during an emergency of a serious nature, “created by an exceptional situation that truly represents a threat to the

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<sup>167</sup> *Miskito Origin Report*, at para. 21.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*, at para. 27 (referring to the position adopted by the Institute of International Law, concluding that population relocations may be legal only if they are “voluntary.”) Institute of International Law in its Meeting in Sienna, 1952/2 *Annuaire*, 138 (1952).

<sup>170</sup> *Miskito Origin Report*, at para. 7; See also *Ambatielos, Greece v. U.K.*, Judgment, 1953 I.C.J. 10 (May 19).

organized life of the State.”<sup>171</sup> Once the emergency is over, the State “should allow the return of the civilian populace to their original region, if they so desire.”<sup>172</sup>

In the case of Vieques, up until the 1930s the residents of the island were able to move freely within the entirety of Vieques’ geographic boundaries. With the annexation of Puerto Rico to the United States in 1898, and the subsequent passing of Public Law No. 247 in 1941, the United States Navy confiscated 24,000 acres of land in Vieques. This massive expropriation of land forced the removal of hundreds residents and their families whose homes and communities were located within the selected territory. Families were often given only 24 hours to evacuate their homes. Some families were given approximately \$30 - \$50 dollars as part of their relocation efforts, but most were not compensated at all.

As discussed in the preceding facts section, the Navy occupied 75% of the land in the island of Vieques, primarily located in the East and West, leaving a North-South corridor for the remaining residents to eke out their livelihoods. After the cessation of military practices and closing of the bases and ranges in 2003, most of the land formerly occupied by the Navy was transferred to the United States Department of the Interior, which declared the majority of the lands as a natural reserve. This has two major implications: first, public access to these lands will be very limited, and second, Viequenses were deprived of any input or decision-making authority regarding the use and development of these lands.

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<sup>171</sup> *Miskito Origin Report*, at para. 8.

<sup>172</sup> *Id.*, at para. 21.

The United States has violated Petitioners' right to residence and movement by removing the residents of Vieques from their territory and continuing to impose conditions that impede the return of the Petitioners to the territory taken from them by the United States. This continued violation is aggravated by the tortious acts of contamination to the land from 60 years of bombardment by the Navy.

As recognized by the Commission, the State can temporarily suspend a limited number of human rights obligations if facing a legitimate emergency. However, it cannot suspend these rights for an indefinite period of time. The suspension of the State's human rights obligations can be temporally limited by the duration of the emergency and the return of the residents to the seized territory must be allowed immediately thereafter.

In the instant case, it is difficult to justify that the actions taken by the United States in the 1940s were in response to the existence of an ongoing emergency which demanded the seizure of 75% of the land in Vieques, forcing hundreds of families from their homes and eliminating all access to the territory. Presuming the justification for the expropriation of Viequeses' land was the imminent threat of World War II, the United States cannot continue prohibiting the residents of Vieques from returning to and enjoying their land raise seventy years later. This ongoing prohibition constitutes an independent and separate violation that fails to satisfy any legitimate exception recognized under the American Declaration.

In light of the allegations raised, Petitioners request that the Commission admit the petition and declare that the forced eviction of Viequeses from their land, the subsequent contamination of the territory and the restrictions imposed on its use are a violation to

Petitioners' rights to residence and freedom of movement as protected under article VIII of the American Declaration.

**F. THE UNITED STATES HAS VIOLATED PETITIONERS' RIGHTS TO WORK AND FAIR REMUNERATION PROTECTED UNDER ARTICLE XIV OF THE AMERICAN DECLARATION IN RELATION TO THE RIGHT TO PERSONAL INTEGRITY AND DIGNITY.**

The right to work and to fair remuneration is encompassed under article XIV of the American Declaration, where it states that:

Every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit. Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family.

The right to work is also protected in article 6.1 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, which indicates that “[e]veryone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence by performing a freely elected or accepted lawful activity.”<sup>173</sup> Several other universal and regional human rights instruments have also recognized the right to work.<sup>174</sup>

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<sup>173</sup> *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador")*, Organization of American States (OAS), A-52, article 6.1 (November 16, 1999).

<sup>174</sup> Art. 8 of the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); Art.5 of the International Convention on the Elimination of all Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; Article 32 of the Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; Articles 11, 25, 26, 40, 52 and 54 of the International Convention on the Protection of the Rights

The Court defined the right to work in its Advisory Opinion on *the Juridical Condition and Rights of Undocumented Migrants* as comprising the panoply of protections granted to workers under national and international legislation.<sup>175</sup> Thus, States are bound to respect and guarantee to all workers the rights that have been already “embodied in the Constitution, labor legislation, collective agreements, agreements established by law (*convenios-ley*), decrees and even specific and local practices, at the national level; and, at the international level, in any international treaty to which the State is a party.”<sup>176</sup> In this sense, the right to work refers to a “protective system for workers” that guarantees the full enjoyment of the rights recognized guaranteed to them by the State.<sup>177</sup>

Other international organs have also interpreted the scope of the right to work. In General Comment No. 18, CESCR stated that the right to work is indispensable to the realization of other rights and is essential for human dignity.<sup>178</sup> In addition, the right to work recognizes that everyone should enjoy “just and favorable conditions of work, in particular the right to safe working conditions.”<sup>179</sup> Nevertheless, the right to work is not an “absolute and unconditional

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of all Migrant Workers and Members of their Families, New York, Dec. 18, 1990, *entered into force* July 1, 2003, 2220 U.N.T.S. 93. Several Regional Instruments also recognize this right. Part II, Art.1 of the European Social Charter, Oct. 18, 1961, 529 U.N.T.S. 89; Europ. T.S. No. 35; Art. 15 of the African Charter on Human and People’s rights, June 27, 1981, 1520 U.N.T.S. 217, 245.

<sup>175</sup> *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (Ser. A) No. 18 (2003) (addressing the right to work).

<sup>176</sup> *Id.*, at para. 155.

<sup>177</sup> *Id.*, at para. 133.

<sup>178</sup> UN Economic and Social Council, Thirty-fifth session, General Comment No. 18, Article 6 of the International Covenant on Economic, Social and Cultural Rights, Adopted on 24 November 2005, E/C.12/GC/18, 6 February 2006, [http://www.nesri.org/sites/default/files/CESCR\\_General\\_Comment\\_18.pdf](http://www.nesri.org/sites/default/files/CESCR_General_Comment_18.pdf)

<sup>179</sup> *Id.*, at para. 2.

right to obtain employment.”<sup>180</sup> However, it does entail a duty on the part of States to guarantee decent work conditions. Therefore, it requires a system of protections against the unfair deprivation of employment and the prohibition of practices contrary to “the fundamental rights of respect for the physical and mental integrity of the worker in the exercise of his/her employment.”<sup>181</sup>

As with all other human rights, States have a duty to respect, protect and fulfill the human right to work. First, States should refrain from creating conditions that hinder the ability of everyone to exercise the right to work. Secondly, States have a duty to protect workers against unfair intervention from state agents or third parties. Finally, States are required to develop a normative system of protection to ensure the full realization of this right.<sup>182</sup>

The duty to respect, protect and fulfill has special meaning in cases where contamination of the sea have affected the health of fishermen and hindered their ability to work. According to Principle 7 of the Stockholm Declaration, “states shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.”<sup>183</sup> In these situations, the State is required to undertake special protective measures.

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<sup>180</sup> *Id.*, at para. 6.

<sup>181</sup> *Id.*, at para. 7.

<sup>182</sup> *Id.*, at para. 22.

<sup>183</sup> Declaration of the United Nations Conference on the Human Environment (“Stockholm Declaration”), U.N. Doc. A/Conf.48/14/Rev. 1(1973).

1. Domestic and international normative framework as applicable to the right to work in the United States.

The Congress of the United States has long recognized the fundamental aspects of the right to work. A long list of federal norms and regulations are directed towards the protection of the rights to decent conditions of work, including among others, regulations on workers safety, compensation programs for employment related injuries and occupational diseases, disability compensation programs, labor unions,<sup>184</sup> working time and minimum wage laws.<sup>185</sup> Furthermore, Congress has also adopted specific laws allowing partial restitution for individuals who have been exposed to radiation in the workplace<sup>186</sup> and medical benefits for coal mine workers who have become permanently disabled from pneumoconiosis ("black lung disease") as a result of their work.<sup>187</sup>

As a member of the International Labor Organization, the United States has also pledged to follow and advance the fundamental principles contained in the Declaration of the Aims and Purposes of the International Labour Organization (Declaration of Philadelphia). Articles II (a) and (b) of the Declaration of Philadelphia, establish that:

[a]ll human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom

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<sup>184</sup> National Labor Relations Act of 1935, 29 U.S.C. §151-169; Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401.

<sup>185</sup> Fair Labor Standards Act of 1938, 29 U.S.C. 201, et seq.

<sup>186</sup> Radiation Exposure Compensation Act (RECA), 42 U.S.C. § 2210, *passed on* October 5, 1990 (2006). The Act's scope of coverage was broadened in 2000. RECA provides limited compensation to individuals who contracted one of 27 medical conditions after exposure to radiation released during nuclear weapons tests or after employment in the uranium industry.

<sup>187</sup> Black Lung Benefits Act, 30 U.S.C. 901 et seq.

and dignity, of economic security and equal opportunity; (b) the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy.

In the local sphere, the Constitution of Puerto Rico also recognizes the fundamental aspects of the right to work, defining it as “the right of every employee to choose his occupation freely and to resign there from [...] as is his right to equal pay for equal work, to a reasonable minimum salary, to protection against risks to his health or person in his work or employment,” among others.<sup>188</sup>

In its evaluation of the instant case, this Honorable Commission should take into consideration that the normative frameworks in the United States and Puerto Rico recognize that workers are entitled to the protection of fundamental rights in the workplace. While the rights do not require States to act affirmatively to guarantee full employment, States must comply with international obligation to guarantee conditions of work that are compatible with human dignity.

2. The United States Navy’s military practices and the resulting environmental contamination have endangered the fishing industry, impeding the right of fishermen to the protection of their lives and livelihood.

As supported by the evidence in this case, the United States has interfered with the livelihood of local fishermen by its contamination of Vieques’ coastal waters on numerous occasions, creating indecent work conditions that affect the health and capacity of fishermen to earn a sustainable living to support themselves and their families.

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<sup>188</sup> Article II § 16, Constitution of the Commonwealth of Puerto Rico.

At the start of every naval exercise, the Navy blocked the traditional fishing routes, forcing the local fishermen to use longer routes which tripled normal fuel costs and at times created hazardous conditions as fishermen were forced to venture either farther out or into non-routine settings. The blockages were implemented five to six times a year and lasted anywhere from ten days to a whole month, depending on the length of the military practices. Some fishermen opted to move to the neighboring United States Virgin Islands to avoid such hardships and restrictions. There are also numerous reported instances of Navy warship propellers cutting loose buoys which signaled the location of the traps set by the fishermen. It is estimated that a trap left unattended for ten months will capture and kill more than 2,500 pounds of marine life, causing further damage to local sea life.<sup>189</sup>

Additionally, sediment studies in the Anones lagoon found a high concentration of heavy metals such as lead, cadmium, cobalt, and copper, as well as TNT, RDX and HMX crystals. These were found at a depth of 50cm.<sup>190</sup> Between November and April it is not uncommon for the lagoon to dry up, allowing for the removal of the ammunition lodged inside from the military's practices. However, when there are heavy rains the lagoon empties out into the Caribbean Sea, carrying with it all the contaminants contained within and poisoning the marine wildlife.

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<sup>189</sup> Cátedra UNESCO de Educación para la Paz, *Tercera Lección Magistral: De Vieques A La Universidad: Lecciones Y Necesidades Del Pueblo De Vieques En La Lucha Por La Paz Y El Desarrollo*, p. 37-38, (1<sup>st</sup> Ed 2003) available at: <http://unescopaz.uprrp.edu/act/Lecciones/tercera/3eraleccionmagistral.pdf>.

<sup>190</sup> ARTURO MASSOL-DEYA, CIENCIA Y ECOLOGÍA: VIEQUES EN CRISIS AMBIENTAL, Casa Pueblo (May 3, 2013), at pp. 29-30.

In addition to the contaminants leaked from the land to the sea, several undetonated bombs were located on the sea floor, including one measuring 18 feet height, located north of the island. Residents have located other foreign objects, such as wreckages from ships that were used in target practice. One such wreckage, the USS Killen, was used in 1958 for atom bomb testing conducted in the Pacific Ocean, and then in 1962 in an experimental exercise on the Chesapeake Bay to test the effects that nuclear exposure had on the ship.<sup>191</sup> The USS Killen was decommissioned and sent to Puerto Rico to be used for target practice. Currently, the ship lies sunken at a depth of 26 feet in Bahía Salina on the southern side of Vieques. Two hundred steel barrels with unknown contents lie inside the wreckage.

According to a study conducted by Professor Arturo Massol, the amount of fish caught has decreased by approximately 90%.<sup>192</sup> At a high of 350,000 pounds in the year 2003 with an average of 150,000 for the first part of the last decade,<sup>193</sup> the amount decreased to an average of 15,000 pounds per year from 2007 to 2011.<sup>194</sup> As a result, Vieques now has 60% fewer fishermen than it did ten years ago.

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<sup>191</sup> U.S.S. Navy, Dictionary of American Naval Fighting Ships, Killen, *available at*:  
<http://www.history.navy.mil/danfs/k3/killen.htm>

<sup>192</sup> Puerto Rico/NMFS Cooperative Fisheries Statistics Program, NA04NMF4340063 (April 2004 - March 2007), *available at* <http://www.drna.gobierno.pr/oficinas/arn/recursosvivos/negociado-de-pesca-y-vida-silvestre/laboratorio-de-investigaciones-pesqueras-1/publicaciones/State%20Federal%20Fisheries%20Statistics%20Report%202004-07.pdf>.

<sup>193</sup> P.R. Department of Natural Resources, Institute of Fishing Investigation, *Puerto Rico/NMFS Cooperative Fisheries Statistics Program 2001-2004*, *available at*  
<http://www.drna.gobierno.pr/oficinas/arn/recursosvivos/negociado-de-pesca-y-vida-silvestre/laboratorio-de-investigaciones-pesqueras-1/publicaciones>

<sup>194</sup> Miprv.com, *Denuncian Que Contaminación En Aguas De Vieques Ocasiona Drástica Merma En La Pesca*, Feb. 20, 2013.  
<http://www.miprv.com/denuncian-que-contaminacion-en-aguas-de-vieques-ocasiona-merma-en-la-pesca/>

In an island with an unemployment rate of 16% and with 73% of its population living below the poverty line,<sup>195</sup> the United States Navy's actions have had a deleterious impact on the right to work and to the personal dignity of fishermen and their families. These harmful actions have resulted in the decimation of Vieques' commercial fishing industry and exacerbated the harms to the health and well-being of current fishermen. For all these reasons, Petitioners request that the Commission admit this claim and find the United States in violation of Petitioners' right to decent conditions of work and personal dignity, as protected under article XIV of the American Declaration.

## **VI. ADMISSIBILITY OF THE PETITION**

### **A. THIS PETITION IS ADMISSIBLE UNDER THE COMMISSION'S RULES OF PROCEDURE.**

#### **1. The Commission is competent to receive this Petition.**

Under Articles 20, 23 and 49 of the Commission's Rules of Procedure, the Commission is competent to receive petitions alleging violations of the American Declaration by the United States by virtue of its ratification of the OAS Charter on June 19, 1951. The Inter-American jurisprudence reiterates that:

“[T]he American Declaration is recognized as constituting a source of legal obligation for OAS member states, including those States that are not parties to the American Convention on Human Rights. These obligations are considered to flow from the human rights obligations of Member States under the OAS Charter. Member States have agreed that the content of the general principles of the OAS

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<sup>195</sup> Office of the Comptroller of Puerto Rico, *Municipality of Vieques: Socioeconomical Indicators*, available at <http://www.ocpr.gov.pr/map/Municipios/Vieques.pdf> (current to Aug. 13, 2013).

Charter is contained in and defined by the American Declaration, as well as the customary legal status of the rights protected under many of the Declaration's core provisions."<sup>196</sup>

Accordingly, the American Declaration is a source of legal obligation and member States of the OAS are required to respect and ensure its human rights provisions.

2. The Commission has jurisdiction over this Petition.

Petitioners allege violations of articles I, IV, VI, VII, VIII, IX, XI, XIV, XVIII, and XXIV of the American Declaration on the Rights and Duties of Man, therefore the Commission has *ratione materiae* to consider the petition and its claims.

Individual Petitioners are residents of Puerto Rico and citizens of the United States via Puerto Rico's status as a territory of the United States. The acts alleged in this petition all occurred on the island of Vieques, Puerto Rico, which is a territory of the United States. Since the facts occurred while Petitioners were under the jurisdiction of the United States, the Commission is competent *ratione loci and ratione personae* to examine the petition.

The Commission is also competent *ratione temporis* given that the obligation to respect and ensure the rights protected in the American Declaration was already in effect for the State when the alleged violations took place.

3. Exhaustion of domestic remedies

In 2005, 7,125 residents of Vieques filed a complaint, which was later amended, against the United States government under the Federal Torts Claims Act ("FTCA"),<sup>197</sup> for the illegal

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<sup>196</sup> *Jessica Gonzalez Lenahan v. United States*, Inter-Am. Comm'n. H.R., Merits, No. 80/11, para. 115 (July 21, 2011).

use of explosives, ordnance and contaminants on the island over several decades, which caused “chronic, long term, negligent and/or deliberate exposure to toxic dust and contamination, hazardous waste and environmental damage.”<sup>198</sup> The complaint alleged violations of federal law and Puerto Rican common law, which include negligence; wrongful death; survival; negligent infliction of emotional distress; trespass; nuisance; civil taking; and fear and fright. Plaintiffs challenged the United States’ Navy conduct under federal statutes, regulation and policies, including the Federal Facilities Compliance Act (“FFCA”),<sup>199</sup> Resource Conservation and Recovery Act (“RCRA”),<sup>200</sup> and internal policies and regulations within the military that require naval officers to comply with environmental pollution standards and inform the local Environmental Protection Agency personnel about any potential toxic material discharge.<sup>201</sup> In Plaintiffs’ response to Defendants’ motion to dismiss, they alleged that the United States “failed to comply with its National Pollution Discharge Elimination System (“NPDES”) permit, which constituted a violation of the Clean Water Act (“CWA”).”<sup>202</sup>

The District Court of Puerto Rico dismissed the case based on sovereign immunity grounds under the discretionary function exception to the Federal Tort Claims Act. On appeal, the First Circuit affirmed dismissal. In his dissent, Judge Torruella stated that:

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<sup>197</sup> 28 U.S.C. § 2671 *et seq.*

<sup>198</sup> *Sanchez v. United States*, 707 F. Supp. 2d 216, 220 (D.P.R. 2010) *aff’d sub nom. Sanchez ex rel. D.R.-S. v. United States*, 671 F.3d 86 (1st Cir. 2012).

<sup>199</sup> 42 U.S.C. § 696

<sup>200</sup> 42 U.S.C. § 6901 *et seq.*

<sup>201</sup> 32 CFR § 700.832; 10 U.S.C. § 2705; OPNAVINST 5090.1B CH-2 § 20-5.1.

<sup>202</sup> 33 U.S.C. §§ 1251-1387; *Sanchez*, 707 F. Supp. 2d at 222.

[n]owhere does the medieval concept of “the King can do no wrong” underlying the doctrine of sovereign immunity sound more hollow and abusive than when an imperial power applies it to a group of helpless subjects. This cannot be a proper role for the United States of America. Under the circumstances alleged in this case I posit that the application of this anachronistic and judicially invented theory violates the due process clause of the Constitution.<sup>203</sup>

Plaintiffs filed a petition for writ of certiorari before the United States Supreme Court on September 13, 2012, which was denied on March 25, 2013.<sup>204</sup>

While there have been separate individual cases seeking damages for the Navy’s actions throughout the time Vieques was subjected to harmful military practices, the *Sanchez* case represented the overwhelming majority of the island (approximately 80% of residents) seeking damages for widespread negligent and/or intentional abuse on behalf of the United States government in Vieques. The case additionally raised concerns regarding the manner in which the Navy is carrying out decontamination efforts in Vieques as part of a designated Superfund site, which have further provoked health and environmental concerns among residents.

In a separate matter, the Municipality of Vieques currently has an administrative claim pending before the Secretary of the Navy for environmental contamination and diminution in value of property in the municipal zone as a result of the AFWTF's presence and activities on Vieques.<sup>205</sup>

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<sup>203</sup> *Sanchez ex rel. D.R.-S. v. United States*, 671 F.3d 86, 119 (1st Cir. 2012) (Torruella, J., dissenting) (internal citations omitted).

<sup>204</sup> *Sanchez ex rel. D.R.-S. v. United States*, 133 S. Ct. 1631, 185 L. Ed. 2d 615 (2013).

<sup>205</sup> *Sanchez v. United States of America*, 2012 WL 8249588, \*2 (U.S.) (amicus curiae brief on behalf of the Municipality of Vieques).

This petition is also timely filed within the six months allowed after exhaustion of domestic remedies. Domestic remedies were exhausted as of the date of the Supreme Court's denial of the petition for writ for certiorari on March 25, 2013.

4. Timeliness of the Petition

Under Article 32 (1) of the Commission's Rules of Procedure, petitions should be submitted within a period of six-months following the date of notification of the final decision that exhausted domestic remedies. The final decision that exhausted domestic remedies in the instant case was made on March 25, 2013. Accordingly, this petition is submitted within the prescribed period.

5. Duplication of formal proceedings

There have been no parallel petitions or cases filed subsequent to the underlying case in other domestic or international forums.

## **VII. CONCLUSION**

For decades, Petitioners and their families have suffered the long term health and environmental consequences of the military practices of the United States Navy that involved the intentional or negligent use of toxic chemicals and warfare. Petitioners ask that this Commission declare the admissibility of this petition and grant all relief deemed appropriate and necessary by the Commission upon adjudication of the merits of this petition, which may include:

1. Declare the admissibility of the petition;
2. Analyze and investigate the human rights violations as outlined, and hold hearings as necessary;

3. Acknowledge and declare the United States' responsibility under the jurisprudence of this body; and
4. Make recommendations concerning appropriate and adequate compensation for the harms caused and to prevent the continuance of further violations throughout the clean-up process.

### **VIII. EVIDENCE**

Petitioners submit an index detailing available supporting evidence, which will be submitted later during the admissibility procedure.

The Petitioners thank the Commission for its careful attention to this pressing matter.

Dated: September 23, 2013

Respectfully submitted,

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## APPENDIX

1. *Sanchez v. United States*, 707 F. Supp. 2d 216 (D.P.R. 2010)
2. *Sanchez ex rel. D.R.-S. v. United States*, 671 F.3d 86 (1st Cir. 2012)
3. *Sanchez ex rel. D.R.-S. v. United States*, cert denied, 133 S. Ct. 1631, 185 L. Ed. 2d 615 (U.S. 2013)
4. *Sanchez et al., v. United States*, Complaint
5. Support from Human Rights Organizations and Legal Clinics
6. Dr. Carmen Ortiz Roque and Yadiris Lopez-Rivera, *Mercury contamination in reproductive age women in a Caribbean island: Vieques*, J. Epidemiol Community Health 2004; 58:756–757
7. Nayda R. Figueroa, MD, MPH, et al., *Incidencia y Mortalidad de Cáncer en Vieques 1990 – 2004* (Nov. 25, 2009)
8. Dr. Carmen Ortiz Roque, Jose Ortiz Roque, Ph.D., and Dr. Dulce Albandoz Ortiz, *Exposición a contaminantes y enfermedad en Vieques: Un trabajo en progreso* (Sept. 14, 2000)

## **SUPPORT OF HUMAN RIGHTS ORGANIZATIONS AND LEGAL CLINICS**

This petition has received support from the following entities:

### **Center for Constitutional Rights**

666 Broadway  
7<sup>th</sup> floor  
New York, NY 10012

### **International Women's Human Rights Clinic**

City University of New York School of Law  
2 Court Square  
Long Island City, NY 11101-4356

### **MADRE**

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### **Sierra Club de Puerto Rico**

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